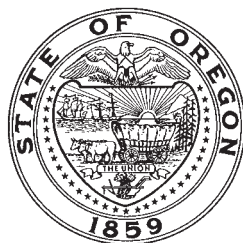


# OREGON BULLETIN

Supplements the 2011 *Oregon Administrative Rules Compilation*

**Volume 50, No. 2**  
**February 1, 2011**

**For December 16, 2010–January 14, 2011**



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

## General Information

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

## Background on Oregon Administrative Rules

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

## How to Cite

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

## Understanding an Administrative Rule’s “History”

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

## Locating the Most Recent Version of an Administrative Rule

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

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

## Locating Administrative Rules Unit Publications

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

## 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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## OTHER NOTICES

### OPPORTUNITY FOR PUBLIC COMMENT NO FURTHER ACTION FINDING FORMER TOWN AND COUNTRY SHELL

**COMMENT DUE:** March 1, 2011

**PROJECT LOCATION:** 3732 South 6th Street, Klamath Falls, Oregon

**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) extends an opportunity for the public to comment on the DEQ's Record-of-Decision (ROD) for the former Town and Country Shell, which is located at 3732 South 6th Street in Klamath Falls, Oregon.

The DEQ staff report describes relevant information related to site investigations and interprets this information related to eligibility for a **No Further Action** (NFA) finding for the facility. The DEQ's Bend, Oregon office is the repository for the facility's administrative file.

The administrative file for this facility can be reviewed by contacting Mr. Cliff Walkey, DEQ's project manager located in Bend, Oregon at (541) 633-2003. The DEQ staff report recommending the NFA is included in the facility's administrative file.

**HOW TO COMMENT:** A public comment period will extend from February 1 through March 1, 2011. Please address all comments and/or inquiries to Mr. Cliff Walkey at the following address:

Cliff Walkey  
Department of Environmental Quality  
475 NE Bellevue Drive, Suite 110  
Bend, Oregon 97701-7415  
(541) 633-2003  
walkey.cliff@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.

### OPPORTUNITY TO COMMENT PROPOSED CONDITIONAL NO FURTHER ACTION GOODMAN OIL EXXON (FORMER), NYSSA, OREGON

**COMMENT DUE:** March 2, 2011

**PROJECT LOCATION:** 304 Main Street, Nyssa

**PROPOSAL:** Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a Conditional No Further Action (NFA) determination for former Goodman Oil Exxon Service Station site located at 304 Main Street in Nyssa, Oregon. The site was an operating service station until 2000.

The Leaking Underground Storage Tank (LUST) Program has reviewed site assessment and remedial activities performed at the site. The site is proposed for a risk-based closure and issuance of a Conditional No Further Action determination. All of the potential exposure concerns are addressed through elimination during development of the site-specific conceptual site model or through institutional controls in the form of an Easement and Equitable Servitude (E&ES). The E&ES recorded on the property includes the following restrictions: no beneficial use of groundwater; no residential use; and the placement of a vapor barrier beneath any buildings constructed on the property. A Contaminate Media Management Plan was previously provided to the city and the property owners within the impacted area.

Additional information concerning site-specific investigations and remedial actions is available in DEQ's LUST database located on the web at <http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp> under Site ID 23 09 0031.

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

**HOW TO COMMENT:** The public comment period will extend from February 1 to March 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 "Conditional No Further Action" determination.

### OPPORTUNITY TO COMMENT PROPOSED NO FURTHER ACTION UPTOWN TEXACO (FORMER), HOOD RIVER, OREGON

**COMMENT DUE:** March 2, 2011

**PROJECT LOCATION:** 1103 12th Street, Hood River

**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 former Uptown Texaco site located at 1103 12th Street in Hood River, Oregon.

The Voluntary Cleanup Program has reviewed assessment and cleanup activities performed at the site. A service station was present at the site by 1942 and operated until the tanks were removed in 1991. The site was later used for auto repair until 2008 and is currently vacant.

Contamination associated with the improper disposal of used oil at the site was identified in 2007 and cleaned up in early 2008. Assessment of areas of potential concern identified during a site evaluation was performed in May 2010 and January 2011. 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 4927.

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 March 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.

### REQUEST FOR COMMENTS PROPOSED CONDITIONAL NO FURTHER ACTION FOR BLOCK 31

**COMMENTS DUE:** by 5 p.m. on March 2, 2011.

**PROJECT LOCATION:** 3550 SW Bond Avenue, Portland, Oregon.



## OTHER NOTICES

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-0100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to issue a no further action determination for the Block 31 site located at 3550 SW Bond Avenue. The DEQ has reviewed site investigation and remediation activities performed by the current developer Pacific Retirement Services, and has determined that no further cleanup actions are necessary.

**HIGHLIGHTS:** The Block 31 site consists of 1.16 acres of property located within the South Waterfront Development Central District. The site is bound on the north by SW Curry Street; on the west by SW Bond Avenue; on the south by SW Pennoyer Street; and on the east by SW River Parkway. Historically the site has been used for various commercial and industrial purposes, including shipbuilding and repair operations, construction material storage, and electrical products manufacturing facilities. Most recently, a TCI cable building was located on the eastern portion of the Block 31 site and was demolished in 2005. The site has been redeveloped with the construction of a continuing care retirement facility comprised of a 30-story structure with one level of parking located below grade.

Petroleum hydrocarbon contamination had been identified in soil and groundwater. A risk-based evaluation consistent with DEQ guidance has been completed following cleanup activities. The evaluation determined that contaminants in soil and groundwater at the site are below Risk Based Criteria values for all exposure pathways of concern. DEQ's site evaluation and no further action determination are documented in the "File Memorandum" for the site dated December 28, 2010. DEQ will consider all public comments received by the close of the comment period before issuing the no further action determination.

**HOW TO COMMENT:** Send written comments on the proposed remedial action to the DEQ project manager, Michael Greenburg at Oregon DEQ, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, Oregon 97201, or e-mail to [greenburg.michael@deq.state.or.us](mailto:greenburg.michael@deq.state.or.us) by 5 p.m., March 2, 2011. To view the project files please call Dawn Weinberger, File Review Specialist, at (503) 229-6729 to schedule an appointment. If you have any questions, please contact the project manager at 503 229-5153.

**THE NEXT STEP:** DEQ will consider all public comments received by the deadline. In the absence of comments, DEQ will issue a conditional no further action for the site.

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

People with hearing impairments may call 711.

### REQUEST FOR COMMENTS PROPOSED APPROVAL OF EXPLANATION OF SIGNIFICANT DIFFERENCE FOR HOYT STREET RAIL YARD SITE

**COMMENTS DUE:** March 2, 2011

**PROJECT LOCATION:** NW 11th Avenue and NW Overton Street, Portland, OR 97239.

**PROPOSAL:** The Department of Environmental Quality is proposing to approve an Explanation of Significant Difference (ESD) to the remedial action for soils described in the December 15, 2000 Record of Decision (ROD) for the Hoyt Street Rail Yard (HSRY) site.

No changes are proposed for the remedial action for groundwater contamination at the site. The areas affected by the proposed ESD are blocks 18, 21, 22, and 25, which are located on the northeast section of the HSRV site and designated as "The Fields".

The changes proposed in the ESD meet the cleanup standards specified in the Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0400. Public notice is being performed under ORS 465.320.

**HIGHLIGHTS:** Hoyt Street Properties purchased the property in 1998 for redevelopment into condominiums and commercial businesses. Prior to 1998, the site operated as a railroad service yard. Environmental investigations have identified petroleum and petroleum constituents in soil and groundwater. The City of Portland currently owns blocks 18 and 21 and is in the process of acquiring blocks 22 and 25 from Hoyt Street Properties for park development.

The 2000 ROD specified that any soil cap for a park area be a minimum of three (3) feet in thickness, and further required that soil cap for play areas be a minimum of five (5) feet thick. The DEQ has reassessed this requirement in light of HSRV site conditions and more recent requirements for similar sites, and has determined that a two (2) foot thick cap of soil meeting site-specific park user risk-based concentrations (RBCs) in park areas and a three (3) foot thick cap meeting urban residential child RBCs in high-use playground areas, are sufficient for the protection of human health and the environment and meet the development objectives for the site. In both areas, an underlying demarcation layer would be required between soils contaminated above the applicable RBCs and capping soil. The urban residential child RBCs are categorized as on-site soil reuse (ON-1) soils and are referenced in Tables 4-1 and 5-1 of the 2000 ROD. The site-specific park user RBCs are presented in Table 4-1 of the proposed ESD and have been reviewed and approved by a DEQ staff toxicologist. Note that as an alternative to a minimum depth soil cap, the ROD allows for hardscape cap consisting of buildings or pavement.

The proposed ESD is documented in the administrative record available at the Northwest Region office in Portland and presented on DEQ's Environmental Cleanup Site Information (ECSI) database.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Northwest Regional Office at 2020 SW 4th Avenue, Suite 400, Portland, Oregon 97201-4987. To access site summary information and the "Explanation of Significant Difference Proposed Change To the Record of Decision for the Hoyt Street Rail Yard, Multnomah County, Oregon" in DEQ's ECSI database on the Internet, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 5443 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5443 in the Site ID/Info column. To be considered, written comments must be received by 4:30 PM on Wednesday, March 2, 2011 and sent to Rebecca Wells-Albers, Project Manager, at the address listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

**THE NEXT STEP:** DEQ will consider all public comments received by the close of the comment period before making a final decision regarding the proposed ESD.

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

People with hearing impairments may call DEQ's TTY number, 1-800-735-2900.

# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

\*\*\*\*\*

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

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

**Stat. Auth.:** ORS 137.320, 137.370, 144.005, 144.025, 144.065, 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

**Proposed Amendments:** 255-020-0005, 255-020-0015

**Last Date for Comment:** 3-1-11

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

**Rules Coordinator:** Michelle Mooney

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

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

\*\*\*\*\*

### Board of Pharmacy Chapter 855

**Rule Caption:** Adopt and amend rules regarding administration of drugs, remote dispensing, compounding, and controlled substances.

Date:	Time:	Location:
3-23-11	10 a.m.	800 NE Oregon St., Rm. 1B Portland, OR

**Hearing Officer:** Tony Burr

**Stat. Auth.:** ORS 689.205

**Stats. Implemented:** ORS 689.155

**Proposed Adoptions:** 855-019-0265, 855-041-0645

**Proposed Amendments:** 855-045-0220, 855-045-0240, 855-041-0600, 855-080-0021

**Last Date for Comment:** 3-23-11, 4:30 p.m.

**Summary:** Division 19 establishes a new rule regarding administration of drugs by a pharmacist and implements ORS 689.655 (OL 2009 Cg. 326) and establishes the conditions under which a pharmacist may administer a drug. Division 41 replaces temporary rules adopted June 2010 regarding Remote Dispensing. Division 45 revises the Compounding rules to accommodate modern technologies where computers can record verification, and there is no need to handwritten initialing. Division 80 revises and replaces temporary rules adopted October 2010 for the Controlled Substances Schedule 1 to include certain synthetic cannabinoids and cathinone-type derivatives that are subject to abuse and have no legitimate medical purpose.

Text of these rules is on the Board of Pharmacy website: <http://www.pharmacy.state.or.us>

**Rules Coordinator:** Karen MacLean

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

**Telephone:** (971) 673-0001

\*\*\*\*\*

### Construction Contractors Board Chapter 812

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

Date:	Time:	Location:
2-15-11	11 a.m.	West Salem Roth's IGA Santiam Rm. 1130 Wallace Rd. NW Salem, OR

**Hearing Officer:** Rob Hernandez

**Stat. Auth.:** ORS 87.093, 183.310 to 183.500, 670.310, 701.235, 701.325, 701.330, 701.350, 701.515, 701.530 701.992 & 701.995

**Stats. Implemented:** ORS 87.007, 87.093, 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.063, 701.073, 701.091, 701.098, 701.106, 701.109, 701.227, 701.305, 701.315, 701.325, 701.330, 701.345, 701.350, 701.355, 701.480, 701.485, 701.510, 701.515, 701.530, 701.992, 701.995

**Proposed Adoptions:** 812-007-0323

**Proposed Amendments:** 812-001-0200, 812-003-0290, 812-005-0800, 812-006-0150, 812-006-0250, 812-008-0070, 812-008-0072, 812-008-0074

**Last Date for Comment:** 2-15-11, Close of Hearing

**Summary:** • 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

# NOTICES OF PROPOSED RULEMAKING

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

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

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

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

**Rule Caption:** Adopts 2011 Oregon Electrical Specialty Code and low-rise electrical provisions of 2011 Oregon Residential Specialty Code.

Date:	Time:	Location:
2-15-11	9:30 a.m.	1535 Edgewater St. NW Salem, OR 97304

**Hearing Officer:** Dennis Clements

**Stat. Auth.:** ORS 183.335, 455.030, 45.110, 455.610 & 479.730

**Stats. Implemented:** ORS 183.335, 455.030, 45.110, 455.610 & 479.730

**Proposed Adoptions:** Rules in 918-251, 918-305, 918-480

**Proposed Amendments:** Rules in 918-251, 918-305, 918-480

**Proposed Repeals:** Rules in 918-251, 918-305, 918-480

**Last Date for Comment:** 2-18-11, 5 p.m.

**Summary:** These proposed rules adopt the 2011 Oregon Electrical Specialty Code based upon 2011 edition of the NFPA 70, National Electrical Code with specific amendments. These proposed rules also adopt the low-rise residential electrical provisions for the 2011 Oregon Residential Specialty Code. Additionally, the proposed rules include some non-substantive housekeeping changes to administrative rule that provide clarity and consistency among the division's rules.

**Rules Coordinator:** Stephanie Snyder

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

**Telephone:** (503) 373-7438

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

**Rule Caption:** Set fees for credit union program and changes date payment is due.

Date:	Time:	Location:
2-17-11	1:30 p.m.	Labor & Industries Bldg. Conference Rm. F 350 Winter St. NE Salem, OR

**Hearing Officer:** Richard Blackwell

**Stat. Auth.:** ORS 723.114

**Stats. Implemented:** ORS 723.114

**Proposed Amendments:** 441-710-0500

**Last Date for Comment:** 2-24-11, 5 p.m.

**Summary:** The Department of Consumer and Business Services (DCBS) is revising its rules to make credit union fees more equitable and to ensure that Oregon credit unions pay fees that accurately reflect the costs of supervision. Proposed rule changes will include a fee increase to cover 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 Department also proposes changing the date fees are due from March 1 to April 1. As noted the calculation of the assessment is calculated on the average assets of the credit unions. Since the fourth quarter call reports are not filed until the end of January, a March 1 payment deadline does not provide sufficient time to calculate the assessments and provide the credit unions with 30 days notice of the assessment amount. This proposed change will provide sufficient time to correctly calculate the appropriate assessment and provide adequate notice.

**Rules Coordinator:** Shelley Greiner

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

**Telephone:** (503) 947-7484

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## Department of Environmental Quality Chapter 340

**Rule Caption:** This rulemaking will adopt new rules for the permitting of graywater reuse and disposal systems.

Date:	Time:	Location:
2-23-11	5 p.m.	811 SW Sixth Ave. Portland, OR
2-24-11	5 p.m.	475 NE Bellevue, Suite 110 Bend, OR
3-2-11	5 p.m.	165 East 7th Ave., Suite 100 Eugene, OR
3-3-11	5 p.m.	Pioneer Hall 73 Winburn Way Ashland, OR

**Hearing Officer:** DEQ Staff

**Stat. Auth.:** ORS 454.610, 454.625, 468.020 & 468B.010

**Stats. Implemented:** ORS 454.610, 454.615, 468B.020 & 468B.050

**Proposed Adoptions:** 340-053-0050, 340-053-0060, 340-053-0070, 340-053-0080, 340-053-0090, 340-053-0100, 340-053-0110

**Proposed Amendments:** 340-045-0070, 340-045-0075

**Last Date for Comment:** 3-11-11, 5 p.m.

**Summary:** The Oregon Department of Environmental Quality (DEQ) is proposing to adopt new rules for the permitting of graywater reuse and disposal systems under OAR Chapter 340, Divisions 45 and 53. The proposed rules would:

- Establish a public policy to encourage the reuse of graywater for beneficial purposes such as irrigation.

- Establish general requirements for all graywater reuse and disposal systems necessary to protect public health and the environment.



## NOTICES OF PROPOSED RULEMAKING

- Define three types of graywater based on level of treatment and identify reuse activities, treatment and monitoring requirements, setbacks, access and exposure controls, and site management practices necessary to protect public health and the environment.

- Establish design and construction standards for graywater reuse and disposal systems.

- Create a three-tier permitting system that defines permitting requirements based primarily on the volume of graywater produced.

- Establish requirements for entering into agreements with local governments to act as program agents.

**Rules Coordinator:** Maggie Vandehey

**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390

**Telephone:** (503) 229-6878

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**Rule Caption:** Revised Water Quality Standards for Human Health Toxic Pollutants and Revised Water Quality Standards Implementation Policies.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-1-11	1 p.m.	Oregon Dept. of Transportation 63055 N Hwy. 97 Bend, OR 97701
2-2-11	9 a.m.	DEQ Eugene Office 165 E. 7th Ave., Suite 100 Eugene, OR 97401
2-2-11	6 p.m.	DEQ Medford Office 221 Stewart Ave., Suite 201 Medford, OR 97501
2-3-11	1:30 p.m.	City Hall, Council Chambers 500 Central Ave. Coos Bay, OR 97420
2-7-11	2:30 p.m.	Ontario City Hall 444 SW 4th St. Ontario, OR 97914
2-8-11	2 p.m.	St. Anthony's Hospital 1601 SE Court Ave. Pendleton, OR 97801
2-10-11	6 p.m.	DEQ Headquarters, Rm. EQC A 811 SW 6th Ave. Portland, OR 97204
2-16-11	1:30 p.m.	DEQ Headquarters, Rm. EQC A 811 SW 6th Ave. Portland, OR 97204

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 468B.010, 468B.020, 468B.035, 468B.110 & 468.020

**Stats. Implemented:** ORS 468B.048

**Proposed Adoptions:** 340-041-0059, 340-045-0105

**Proposed Amendments:** 340-041-0061, 340-041-0033, 340-041-0007, 340-042-0080, 340-042-0040

**Last Date for Comment:** 2-23-11, 5 p.m. PST

**Summary:** This notice of proposed rulemaking was first published in the January 2011 Secretary of State bulletin. It is being republished to provide the following updates:

(1) The public hearing in Ontario, Oregon will begin at 2:30 pm Mountain Time;

(2) There will be a public hearing before the Environmental Quality Commission on February 16, 2011; and

(3) The deadline for public comment has been extended to February 23, 2011.

DEQ uses Oregon's water quality standards to implement Clean Water Act programs, which includes assessing Oregon's water quality and developing and enforcing wastewater discharge permits, Total Maximum Daily loads and water quality certifications. The proposed rules amend Oregon's water quality standards for toxic pollutants and other water quality standards and policies related to the application and implementation of the water quality standards in Clean Water Act and state nonpoint source control programs.

Proposed rule amendments:

**Human health toxics criteria** (OAR 340-041-0033): Revised numeric criteria based on an increased fish consumption rate of 175 grams per day. Criteria that are not based on a fish ingestion method are not revised. Additional criteria revisions incorporate EPA's 2002 criteria recommendations, which include added pollutants and revisions to other variables (such as toxicity factors) used to derive some criteria. The rule also specifies that the new criteria become effective upon approval by the Environmental Protection Agency.

**Variance provision** (OAR 340-041-0061(2) being moved to OAR 340-041-0059): Revised rule specifies procedures and requirements, including a pollutant reduction plan, to obtain a variance from water quality standards. A variance establishes alternate requirements for a discharger when it demonstrates that permit limits based on water quality standards cannot be met based on one of six justification factors. Variances require EPA approval.

**Nonpoint source pollution** (OAR 340-041-0007 and 340-041-0061): Revised water quality standards implementation rules pertaining to agriculture and forestry are proposed to make DEQ's rules consistent with state statutes affecting nonpoint sources of pollution.

**Total maximum daily loads (TMDLs)** (OAR 340-042-0040 and 340-042-0080): Makes DEQ's rules consistent with state statutes to allocate load limits to air and land sources of pollutants in establishing TMDLs.

Proposed new rules:

**Intake credits** (OAR 340-045-0105): New permitting provision that allows DEQ to account for background pollutants that are present in a discharger's intake water and pass through the facility as long as the discharge does not increase the mass or concentration of the pollutant.

**Background pollutant allowance** (OAR 340-041-0033): New provision in the toxic substances water quality standards that allows a limited increase in the concentration of pollutants present in a discharger's intake water as long as the facility does not discharge added mass load of the pollutant and the ambient water body concentration does not exceed a 10<sup>-4</sup> (1 in 10,000) risk level value.

In October, 2008, the Environmental Quality Commission directed DEQ to pursue rulemaking to set new water quality standards for toxic pollutants in Oregon based upon an increased fish consumption rate of 175 grams per day. The commission also directed DEQ to propose rule language or develop other implementation strategies to: 1) reduce the adverse impacts of toxic substances in Oregon's waters that are the result of nonpoint source discharges or other sources not subject to permitting, and 2) allow DEQ to implement the standards in an environmentally meaningful and cost-effective manner. The proposed rules respond to these EQC directives. The proposed human health toxics criteria revisions correct deficiencies identified by the Environmental Protection Agency in their June 2010 disapproval of the human health criteria adopted by the EQC in June, 2004.

For additional information regarding this rulemaking, please contact: Andrea Matzke at the Department of Environmental Quality, call toll free in Oregon 800-452-4011 or 503-229-5384, or visit DEQ's public notices webpage [http://www.deq.state.or.us/news/public\\_notices/PN.asp](http://www.deq.state.or.us/news/public_notices/PN.asp)

To comment on this rulemaking, submit your comments to: Andrea Matzke, Oregon Department of Environmental Quality, 811 SW 6th Ave, Portland, Oregon, 97204, or by fax to 503-229-6037, or by email to [ToxicsRuleMaking@deq.state.or.us](mailto:ToxicsRuleMaking@deq.state.or.us) (if you do not receive an auto response to your emailed comments, contact staff listed above).

**Rules Coordinator:** Maggie Vandehey

**Address:** Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204-1390

**Telephone:** (503) 229-6878



# NOTICES OF PROPOSED RULEMAKING

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Amend Rules for Sport and Commercial Halibut and Commercial Sardine Fisheries.

**Date:** 3-11-11      **Time:** 8 a.m.      **Location:** Driftwood Shores Resort & Conference Center, Pacific Rm. 88416 First Ave. Florence, OR 97439

**Hearing Officer:** Fish & Wildlife Commission  
**Stat. Auth.:** ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

**Stats. Implemented:** ORS 496.162, 506.109 & 506.129

**Proposed Adoptions:** Rules in 635-004, 635-0039

**Proposed Amendments:** Rules in 635-004, 635-0039

**Proposed Repeals:** Rules in 635-004, 635-0039

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

**Summary:** Amended rules relate to sport and commercial halibut and commercial sardine fisheries. Modifications to the regulations establish seasons and/or quotas for these fisheries in 2011 concurrent to those adopted federally. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** Therese Kucera

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

**Telephone:** (503) 947-6033

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**Rule Caption:** Columbia River Sturgeon, Salmon, Smelt and Miscellaneous Fishing Regulations for 2011.

**Date:** 3-11-11      **Time:** 8 a.m.      **Location:** Driftwood Shores Resort & Conference Center, Pacific Rm. 88416 First Ave., Pacific Rm. Florence, OR 97439

**Hearing Officer:** Fish & Wildlife Commission  
**Stat. Auth.:** ORS 183.325, 496.118, 496.138, 496.146, 506.109 & 506.119

**Stats. Implemented:** ORS 496.162, 506.109, 506.129 & 507.030

**Proposed Adoptions:** Rules in 635-017, 635-023, 635-041, 635-042

**Proposed Amendments:** Rules in 635-017, 635-023, 635-041, 635-042

**Proposed Repeals:** Rules in 635-017, 635-023, 635-041, 635-042

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

**Summary:** Consider amendments of rules related to: (1) Non-Treaty commercial fishing in the Columbia River and Select Areas; (2) Treaty commercial fisheries; and (3) Recreational sturgeon fishing in the Columbia and Willamette rivers.

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

**Rules Coordinator:** Therese Kucera

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

**Telephone:** (503) 947-6033

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**Rule Caption:** Amend the rule regarding the authority to take or harass wildlife.

**Date:** 3-11-11      **Time:** 8 a.m.      **Location:** Driftwood Shores Resort & Conference Ctr. 88416 First Ave. Florence, OR 97439

**Hearing Officer:** Fish & Wildlife Commission  
**Stat. Auth.:** ORS 496.012, 496.138, 496.162, 498.002, 498.006 & 498.298

**Stats. Implemented:** ORS 496.012, 496.138, 496.162, 498.002, 498.006 & 498.298

**Proposed Amendments:** Rules in 635-043

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

**Summary:** This rule clarifies sworn law enforcement officers' authority to take or harass wildlife for law enforcement activities.

**Rules Coordinator:** Therese Kucera

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

**Telephone:** (503) 947-6033

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**Rule Caption:** Repeal of Deadline Rule for Review of certain Wildlife Management Plans.

**Date:** 3-11-11      **Time:** 8 a.m.      **Location:** Driftwood Shores Resort & Conference Center 88416 First Ave. Florence, OR 97439

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146, 496.162 & 496.164

**Stats. Implemented:** ORS 496.012, 496.138, 496.146, 496.162 & 496.164

**Proposed Repeals:** Rules in 635-120, 635-135, 635-160, 635-170, 635-180, 635-190, 635-195

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

**Summary:** Repeal the rule requiring a deadline for review of certain wildlife management plans.

**Rules Coordinator:** Therese Kucera

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

**Telephone:** (503) 947-6033

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

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

**Date:** 2-22-11      **Time:** 10 a.m.      **Location:** 500 Summer St. NE, Rm. 255 Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.730, 411.816, 411.825, 412.006, 412.009, 412.014, 412.049, 412.064, 412.124, 414.231 & 414.712

**Other Auth.:** 42 USC 1320b-7, 42 USC 1382, 42 USC 1383, 42 USC 1396a, 42 USC 1396d, 42 USC 1396r-1, 42 USC 1396r-6, 42 USC 1396r-19, American Recovery and Reinvestment Act of 2009 (ARRA) Section 5004 (Pub. Law 111-5), Social Security Act section 1905(a)(16), Medicare Improvements for Patients and Providers Act of 2008 (Pub. Law 110-275, 122 Stat. 2494), 7 CFR 273.10, 7 CFR 273.10(c)(3), 42 CFR 435.600, 42 CFR 435.902, 42 CFR 435.903, 42 CFR 435.910, 42 CFR 435.920, 42 CFR 435.1010, 42 CFR 457, 42, CFR 457.301, 42 CFR 457.305, 42 CFR 457.320, 42 CFR 457.340, 42 CFR 457.350, 45 CFR 206.10, 45 CFR Part 233, 45 CFR 260.30, 45 CFR 260.31, 45 CFR Part 400, ORS 291.261

**Stats. Implemented:** ORS 409.010, 409.040, 409.050, 411.060, 411.070, 411.083, 411.400, 411.404, 411.439, 411.443, 411.445, 411.704, 411.706, 411.730, 411.816, 411.825, 412.001, 412.006, 412.009, 412.014, 412.049, 412.064, 412.124, 414.025, 414.231, 414.426, 414.428, 414.712, 414.826, 414.831, 414.839 & 418.005

**Proposed Amendments:** 461-110-0210, 461-110-0310, 461-110-0330, 461-110-0340, 461-110-0350, 461-110-0370, 461-110-0390, 461-110-0400, 461-110-0410, 461-110-0430, 461-110-0530, 461-110-0630, 461-110-0750, 461-115-0705, 461-120-0210, 461-135-0095, 461-135-0950, 461-140-0110, 461-150-0055, 461-155-0030, 461-160-0015, 461-160-0400, 461-160-0430, 461-160-0700, 461-170-0010, 461-190-0211

**Proposed Repeals:** 461-115-0705(T), 461-135-0095(T), 461-150-0055(T), 461-155-0030(T), 461-160-0015(T), 461-160-0400(T),

## NOTICES OF PROPOSED RULEMAKING

461-160-0430(T), 461-160-0700(T), 461-170-0010(T), 461-190-0211(T)

**Last Date for Comment:** 2-24-11, 5 p.m.

**Summary:** OAR 461-110-0210, 461-110-0310, 461-110-0330, 461-110-0340, 461-110-0350, 461-110-0370, 461-110-0390, 461-110-0400, 461-110-0410, 461-110-0430, 461-110-0530, 461-110-0630, and 461-110-0750 about how the Department determines the composition of the various eligibility groups (household, filing, financial, need, and benefit groups) for the Department's programs covered by chapter 461 of the Oregon Administrative Rules are being amended to reflect current Department terminology, policy, and practices. OAR 461-110-0210 about how the Department determines the composition of a household group (the individuals who live together with or without benefit of a dwelling) also is being amended to state when the Department considers a household group that included a member required to comply with the Simplified Reporting System (SRS) under OAR 461-170-0101 as no longer living together. This rule also is being amended to restate when a caretaker relative absent from a Temporary Assistance for Needy Families (TANF) or Refugee Assistance (REF) household group for 30 days or more is considered still to be in the household group. OAR 461-110-0310 regarding the general requirements for how the Department determines the composition of a filing group (the individuals whose circumstances are considered in the eligibility determination process) also is being amended to state that the specific program requirements for determining filing group composition are found in OAR 461-110-0330 to 461-110-0430. OAR 461-110-0330 about how the Department determines the composition of a filing group in the Extended Medical Assistance (EXT), Medical Assistance Assumed (MAA), and Temporary Assistance for Needy Families (TANF) programs also is being amended to restate when a dependent child is not included in the filing group and cross-reference the applicable OAR for each of these instances. OAR 461-110-0340 about how the Department determines the composition of a filing group in the Medical Assistance to Families (MAF) and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs also is being amended to state when the sibling of a dependent child in the MAF program filing group must be included in and when a sibling may be excluded from the MAF program filing group. This rule also is being amended to restate who is included in a SAC program filing group. OAR 461-110-0350 about how the Department determines the composition of a filing group in the Employment Related Day Care (ERDC) program also is being amended to cross-reference the OAR containing the definitions of defined terms used in this rule. OAR 461-110-0370 about how the Department determines the composition of a filing group in the Supplemental Nutrition Assistance Program (SNAP) also is being amended to cross-reference the OAR containing the definition of defined terms used in this rule. This rule also is being amended to state in which benefit months an exclusion (based on the individual having received SNAP program benefits in another household) from being included in a SNAP program filing group applies. OAR 461-110-0390 about how the Department determines the composition of a filing group in the General Assistance (GA) and General Assistance Medical (GAM) programs also is being amended to cross-reference the OAR containing the definition of a defined term used in this rule. OAR 461-110-0400 about how the Department determines the composition of a filing group in the Healthy KidsConnect (HKC) and Oregon Health Plan (OHP) programs also is being amended to restate when individuals must be in the same filing group and to cross-reference the OAR containing the definitions of defined terms used in this rule. OAR 461-110-0410 about how the Department determines the composition of a filing group in the Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiaries (QMB) programs also is being amended to remove references to the Oregon Supplemental Income Program (OSIP) program. OAR 461-110-0430 about how the Department determines the composition of a filing group in the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs also is being amended to restate

when a separate REF or REFM program filing group may be formed within a household group. OAR 461-110-0530 about how the Department determines the composition of a financial group (the members of the filing group whose income and resources count in determining eligibility and benefits) also is being amended to remove references to the OSIP program and to cross-reference the OAR containing the definitions of defined terms used in this rule. This rule also is being amended to state that its provisions regarding the OSIPM program do not apply to the Oregon Supplemental Income Program Medical – Employed Persons with Disabilities program (OSIPM-EPD). OAR 461-110-0630 about how the Department determines the composition of a need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) also is being amended to cross-reference the OAR containing the definitions of defined terms used in this rule. OAR 461-110-0750 about how the Department determines the composition of a benefit group (the individuals who receive benefits) also is being amended to restate how the Department determines the composition of the benefit group for an individual not assumed eligible in all programs except the GA and GAM programs.

OAR 461-115-0705 about the verification requirements for the Department's medical programs is being amended to restate the income verification requirements for clients of the Healthy KidsConnect (HKC), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs. This rule also is being amended to make permanent the temporary changes made November 1, 2010.

OAR 461-120-0210 about when a client is required to provide or apply for a social security number to be eligible for Department programs is being amended to state an individual must provide a valid social security number or apply for a social security number to be included in a Breast and Cervical Cancer Medical (BCCM), Continuous Eligibility for OHP-CHP Pregnant Women (CEC), Continuous Eligibility for Medicaid (CEM), Extended Medical Assistance (EXT), Healthy KidsConnect (HKC), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), or Medical Coverage for Children in Substitute or Adoptive Care (SAC) program benefit group (the individuals who receive benefits) to bring the Department into compliance with federal law.

OAR 461-135-0095 about the specific eligibility requirements for the Extended Medical Assistance (EXT) program is being amended to comply with federal law by stating that a filing group (the individuals from the household group whose circumstances are considered in the eligibility determination process) which lost Medical Assistance Assumed (MAA) or Medical Assistance to Families (MAF) program eligibility due to an increase in child support received must have been eligible for and received MAA or MAF program benefits for at least three of the six months prior to the beginning of the EXT program benefit eligibility period. This rule is also being amended to clarify its references to defined terms. This rule also is being amended to make permanent the temporary changes made November 15, 2010.

OAR 461-135-0950 about how the Department determines the eligibility of an inmate for programs covered by Chapter 461 of the Oregon Administrative Rules is being amended to state that an individual in a public institution pending other arrangements as defined in federal law is not considered an inmate. This rule also is being amended to restate the definition for the term "public institution". This rule also is being amended to state how the Department treats program benefits for a pregnant woman receiving medical assistance through the Breast and Cervical Cancer Medical (BCCM), Continuous Eligibility for OHP-CHP pregnant women (CEC), or Continuous Eligibility for Medicaid (CEM) programs who becomes an inmate of a public institution.

OAR 461-140-0110 about how the Department treats a client's periodic income (income received on a regular basis less often than monthly) when making eligibility and benefit level decisions is being

## NOTICES OF PROPOSED RULEMAKING

amended to restate how the Department treats periodic income for a Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) program filing group (the individuals whose circumstances are considered in the eligibility determination process) that does not include at least one member who is working under a TANF Job Opportunity and Basic Skills (JOBS) Plus agreement.

ORAR 461-150-0055 about eligibility and budgeting in the Oregon Health Plan (OHP) program is being amended to state that its provisions apply to the Healthy KidsConnect (HKC) program. This rule also is being amended to state how the Department determines the budget month (the calendar month from which information is used to determine eligibility and benefit level for the payment month) when the Department initiates a redetermination of eligibility for an HKC or Oregon Health Plan (OHP) program client by sending the client a DHS 945 form about the need to renew their medical benefits. In addition, this rule is being amended to restate how the Department determines the countable income of an HKC or OHP program financial group (the individuals whose income and resources count in determining eligibility). This rule also is being amended to clarify which standard is used to determine eligibility for an HKC, Oregon Health Plan – Persons Under 19 (OHP-CHP), or Oregon Health Plan – Children (OHP-OPC) program client when the Department is using an Express Lane Eligibility (ELE) finding to determine the client's eligibility. This rule also is being amended to make permanent the temporary changes made effective January 1, 2011.

ORAR 461-155-0030 about the income standards in the Job Opportunity and Basic Skills (JOBS), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), Medical Coverage for Children in Substitute or Adoptive Care (SAC), and Temporary Assistance for Needy Families (TANF) programs is being amended to state the countable income limit for a filing group (the individuals from the household whose circumstances are considered in the eligibility determination process) in the JOBS program with a non-custodial parent who has a dependent child receiving TANF benefits, when both the parent and child are residents of Oregon, for the parent to be eligible to participate in JOBS program activities. This rule also is being amended to make permanent the temporary rule changes made effective January 1, 2011.

ORAR 461-160-0015 about resource limits used in eligibility determinations for the Department's programs is being amended to restate the resource limits that were effective January 1, 2011 for clients of the Qualified Medicare Beneficiaries (QMB) program and to make permanent the temporary changes made to this rule effective January 1, 2011.

ORAR 461-160-0400 about the use of income to determine eligibility and benefits in the Supplemental Nutrition Assistance Program (SNAP) is being amended to remove language allowing a filing group (individuals from the household whose circumstances are considered in the eligibility determination process) that was categorically eligible or included an elderly individual or an individual with a disability to be eligible for SNAP benefits when the filing group's adjusted income equals or exceeds the adjusted income limit of the need group (the individuals whose basic and special needs are used in determining eligibility and benefit level). This rule also is being amended to make permanent the temporary rule changes made effective November 1, 2010.

ORAR 461-160-0430 about deductions from countable income made to determine adjusted income for the Supplemental Nutrition Assistance Program (SNAP) is being amended to restate the deduction amounts that were effective as of October 1, 2010. This rule also is being amended to make permanent the temporary rule changes made effective January 1, 2011.

ORAR 461-160-0700 about how the Department uses income when determining eligibility for Oregon Health Plan (OHP) and Healthy KidsConnect (HKC) program benefits is being amended to restate which countable income the Department uses for a client's budget month (the calendar month from which information is used to deter-

mine eligibility and benefit level for the payment month). This rule also is being amended to remove the provision about how the Department determines the members of a need group following an Express Lane Agency (ELA) finding of eligibility. In addition, this rule is being amended to remove provisions allowing the Department to make an eligibility determination for an Oregon Health Plan – Persons Under 19 (OHP-CHP), Oregon Health Plan – Children (OHP-OPC), Oregon Health Plan – Children Under 6 (OHP-OP6), and Oregon Health Plan – Pregnant Females and their newborn children (OHP-OPP) program need group member or a need group member who was a victim of domestic violence to be eligible for OHP program benefits when the countable income of the financial group (the individuals whose income and resources count in determining eligibility) was below the applicable OHP program income standard even when the average countable income of the financial group equaled or exceeded the applicable OHP program income standard. This rule also is being amended to make permanent the temporary changes made effective January 1, 2011.

ORAR 461-170-0010 about the requirement that a client report changes in accordance with the reporting system to which the Department assigns the client is being amended to state the Department considers a client to have reported a change to the Department when that change is reported to Office of Private Health Partnerships (OPHP). This rule also is being amended to make permanent the temporary changes made November 1, 2010.

ORAR 461-190-0211 about the payments the Department provides to clients for support services (child care, housing, transportation, and other needs) to help a client successfully comply with the activities in the client's case plan is being amended to state that a non-custodial parent of a child receiving Temporary Assistance for Needy Families (TANF) program benefits must be in a filing group (the individuals from the household whose circumstances are considered in the eligibility determination process) with income below the countable income limit standard under ORAR 461-155-0030 to be eligible to receive support service payments. This rule also is being amended to make permanent the temporary rule changes made effective January 1, 2011.

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

Written comments may be submitted until February 24, 2011 at 5:00 p.m. Written comments may be e-mailed to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Children, Adults, and Families Division, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

**Rules Coordinator:** Annette Tesch

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

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

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

**Rule Caption:** RCF/ALF Requirements for New Construction or Initial Licensure.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-15-11	2:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rooms 137AB Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 410.070 & 443.450

**Other Auth.:** Appellate Court Opinion A142248

**Stats. Implemented:** ORS 443.420

**Proposed Amendments:** 411-054-0005, 411-054-0012

**Proposed Repeals:** 411-054-0005(T), 411-054-0012(T)



# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 3-21-11, 5 p.m.

**Summary:** The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is proposing to permanently amend OAR 411-054-0005 (Definitions) and OAR 411-054-0012 (Requirements for New Construction or Initial Licensure) relating to residential care (RCF) and assisted living (ALF) facilities to meet the intent of the legislature as the language in OAR 411-054-0012 was found to exceed the authority that the legislature delegated to DHS.

**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 Oregon State Police**  
**Chapter 257**

**Rule Caption:** Amends OSP rules to comply with changes to ODOT rules.

**Stat. Auth.:** ORS 181.440

**Stats. Implemented:** ORS 181.440

**Proposed Amendments:** 257-050-0200

**Last Date for Comment:** 2-22-11

**Summary:** Pursuant to ORS 181.440, which permits the Superintendent of the Oregon State Police to make rules governing the eligibility of tow businesses to be placed and remain on any list of qualified tow businesses used by the Department when it requests towing services on behalf of any person. All qualified tow businesses providing service to the public and the Department through calls received from the Oregon State Police shall conduct their operation in accordance with all applicable federal, state and local laws, rules or their equivalent. To maintain consistency across State Agencies, OSP is amending its rule to use language that is consistent with ODOT's rules and policies. The change consists of a housekeeping measure which amends OSP OAR's to reference ODOT's use of the Oregon Temporary traffic Control Handbook (OTTCH).

**Rules Coordinator:** Cort Dokken

**Address:** Department of Oregon State Police, 255 Capitol St. NE, 4th Floor, Salem, OR 97310

**Telephone:** (503) 934-0228

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

**Rule Caption:** Amend core value definitions.

**Stat. Auth.:** ORS 181.640, 181.661, 181.662, 181.664 & 183.341

**Stats. Implemented:** ORS 181.640, 181.661, 181.662 & 181.664

**Proposed Amendments:** 259-009-0070

**Last Date for Comment:** 2-21-11, Close of Business

**Summary:** OAR 259-009-0070 deals with denial and revocation of fire certifications. It also defines core values that are integral to the fire service profession. This proposed rule amendment removes duplicate language that makes it difficult to distinguish among the core value definitions.

**Rules Coordinator:** Linsay Bassler

**Address:** 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2431

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

**Rule Caption:** Adds definitions and clarifies requirements for the issuance trip permits.

**Stat. Auth.:** ORS 184.616, 184.619, 802.010 & 803.600

**Stats. Implemented:** ORS 801.420, 803.430, 803.600, 803.602, 803.605, 803.625, 803.635, 803.640, 803.655, 803.665, 806.080, 810.490 & 822.215

**Proposed Amendments:** 735-034-0000, 735-034-0005, 735-034-0010, 735-154-0005

**Last Date for Comment:** 2-21-11

**Summary:** ORS 803.600 authorizes DMV to designate qualified persons to act as agents of DMV for purposes of issuing vehicle trip permits. Persons who wish to become trip permit agents must enter into an agreement with DMV and agree to abide by DMV's trip permit rules. DMV has completed a new trip permit agent agreement for 2011-2016. The agreement authorizes qualified persons to issue trip permits during that period.

In drafting the agreement, DMV identified the need to update certain rules pertaining to trip permits. The proposed amendments add definitions and clarify requirements for trip permit agreements. Other, non-substantive, changes simplify rule language to improve readability.

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

**Rules Coordinator:** Lauri Kunze

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

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

.....  
**Rule Caption:** Disabled Person Parking Permits and Parking Identification Card.

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 811.602, 811.603, 811.607 & 811.609

**Stats. Implemented:** ORS 811.602, 811.603, 811.605, 811.606, 811.607 & 811.609

**Proposed Adoptions:** 735-080-0046

**Proposed Amendments:** 735-080-0020, 735-080-0040

**Last Date for Comment:** 2-21-11

**Summary:** These administrative rules describe when DMV will issue different types of disabled person parking permits and when DMV will replace or renew a disabled person parking permit. DMV is revising the application form for an individual, wheelchair or temporary disabled person parking permit to make the process more efficient and less confusing for applicants. Consequently, some references to specific application forms must be removed from these rules. DMV also proposes to clarify the requirements for obtaining a foreign visitor permit and to format the rules in a way that an applicant can more easily find information on the type of permit for which he or she is applying. DMV also proposes to adopt OAR 735-080-0046 so that the process for renewing a disabled person parking permit is in a separate rule from the replacement information contained in OAR 735-080-0040. Again, DMV hopes that this change will benefit the users of these rules by making it easier to find the correct information.

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

**Rules Coordinator:** Lauri Kunze

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 3930 Fairview Industrial Dr. SE, Salem, OR 97302

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

.....  
**Department of Transportation,**  
**Highway Division**  
**Chapter 734**

**Rule Caption:** Environmental performance standards and improvements to the environmental permitting process.

**Stat. Auth.:** ORS 184.616, 184.619 & 2009 OL Ch. 865, Sec. 18

**Stats. Implemented:** 2009 OL Ch. 865, Sec. 18

**Proposed Adoptions:** 734-024-0005, 734-024-0015, 734-024-0020, 734-024-0030, 734-024-0040

**Last Date for Comment:** 2-21-11

**Summary:** Section 18 of the Jobs and Transportation Act (HB 2001) passed in 2009 outlined a requirement to consider environmental performance standards for all ODOT-funded projects. These performance standards will define how ODOT incorporates environmental



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regulations into design and construction of transportation projects. These rules outline the process for developing the environmental performance standards.

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

.....  
**Oregon Department of Education**  
**Chapter 581**

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

**Date:** 2-23-11      **Time:** 1 p.m.      **Location:** 255 Capitol St. NE, Rm. 251A Salem, OR

**Hearing Officer:** Cindy Hunt

**Stat. Auth.:** ORS 326.051 & 329.075

**Stats. Implemented:** ORS 329.075 & 329.485

**Proposed Amendments:** 581-022-0610

**Last Date for Comment:** 2-23-11, 5 p.m.

**Summary:** Removes paper-based Braille as an administration option for Oregon Assessments of Knowledge and Skills (OAKS). Starting in 2011-12, ODE will provide access for OAKS for students using Braille through the OAKS Online system. ODE proposes this rule to go into effect in June 2011.

**Rules Coordinator:** Diane Roth

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

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

.....  
**Oregon Health Authority,**  
**Division of Medical Assistance Programs**  
**Chapter 410**

**Rule Caption:** Public safety and medical appropriateness for speech and augmentation systems/devices and durable medical equipment.

**Date:** 2-17-11      **Time:** 2:30 p.m.      **Location:** Human Services Bldg., Rm. 137D 500 Summer St. NE Salem, OR 97301

**Hearing Officer:** Darlene Nelson

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

**Stats. Implemented:** ORS 414.025 & 414.065

**Proposed Amendments:** 410-122-0080, 410-122-0180, 410-129-0220

**Proposed Repeals:** 410-122-0080(T), 410-122-0180(T), 410-129-0220(T)

**Last Date for Comment:** 2-22-11

**Summary:** The DMEPOS and Speech-language pathology, Audiology and Hearing Aid Services Programs administrative rules govern the Division's payments for services and supplies to certain clients.

Having temporarily amended rules listed above, the Division will permanently amend these rules with the filing of this Notice to provide clarity of coverage, ensure client safety, and ensure medically appropriate devices are provided. These amendments are needed to assist clients, speech therapists, and other providers of equipment to have clear and precise knowledge of prescription and medical appropriateness requirements for Speech Augmentative Communication Systems and Devices acquired through the Oregon health Plan. The current Temporary rules will be repealed upon permanent adoption.

**Rules Coordinator:** Darlene Nelson

**Address:** Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301

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

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

**Rule Caption:** Clarification of the civil penalty schedule for non-compliance relating to the registration and education requirements.

**Date:** 3-2-11      **Time:** 9 a.m.      **Location:** 725 Summer St. NE, Rm. 124b Salem, OR 97301

**Hearing Officer:** Theresa Wingard

**Stat. Auth.:** 2009 OL Ch. 816, Sec. 9

**Stats. Implemented:** 2005 OL Ch. 619, Sec. 4, as amended by 2009 OL Ch. 816, Sec. 12

**Proposed Adoptions:** 813-007-0057

**Proposed Repeals:** 813-007-0055, 813-007-0060

**Last Date for Comment:** 3-15-11, 5 p.m.

**Summary:** 813-007-0057 - Clarifies the schedule of civil penalties that may be assessed in the event of noncompliance by a landlord or owner for the registration and education requirements. Allows for a modification of a civil penalty in the event of mitigating circumstances. This rule will replace 813-007-0055 and 813-007-0060.

**Rules Coordinator:** Sandy McDonnell

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

**Telephone:** (503) 986-2012

.....  
**Oregon Liquor Control Commission**  
**Chapter 845**

**Rule Caption:** Amend two financial assistance rules updating maximum display bin/rack and exterior sign allowances.

**Date:** 2-22-11      **Time:** 10 a.m.      **Location:** 9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman

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

**Stats. Implemented:** ORS 471.398(3) & (4)

**Proposed Amendments:** 845-013-0030, 845-013-0050

**Last Date for Comment:** 3-8-11

**Summary:** The Oregon Beer & Wine Distributors Association (OBWDA) submitted a petition requesting to amend two Financial Assistance rules in Division 13; this division of rules implements our statutes governing "Tied-House" prohibitions. The petitioner proposes to amend OAR 845-013-0030 (Fixtures, Furniture, Furnishings) which describes the very limited items (display bins or racks) that a supplier (manufacturer or wholesaler) is allowed to provide to a retailer. The proposed amendments would change the maximum value allowed for such branded bins & racks from \$30 to \$100, would eliminate the ability to loan bins or racks worth more than that, and would change the allowance of no more than one bin/rack per retailer at any given time from one per trade name to one per brand name family. The petitioner also proposes to amend OAR 845-013-0050 (Point of Sale Advertising Materials and Consumer Take-Aways) which describes the limited conditions under which these items may be provided to a retailer by a supplier. The one proposed amendment in subsection (3)(g) of this rule would change the maximum size of exterior point of sale allowed from 630 square inches to 1500 square inches.

**Rules Coordinator:** Jennifer Huntsman

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

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

.....  
**Oregon Public Employees Retirement System**  
**Chapter 459**

**Rule Caption:** Adopts new rule; amends rules regarding trustee to trustee transfer for eligible purchases at retirement.

**Date:** 2-22-11      **Time:** 2 p.m.      **Location:** PERS Boardroom 11410 SW 68th Pkwy. Tigard, OR

# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Daniel Rivas  
**Stat. Auth.:** ORS 238.222, 238.650 & 243.470  
**Stats. Implemented:** ORS 238.222, 238.320, 238.325, 238.330, 243.401–243.507 & 1999 OL Ch. 971  
**Proposed Adoptions:** 459-005-0580  
**Proposed Amendments:** 459-015-0055, 459-050-0075, 459-050-0090

**Last Date for Comment:** 3-9-11

**Summary:** Implementation of Senate Bill 399 requires amendments to OAR 459-050-0075 and 459-050-0090 to establish the criteria and process for a trustee-to-trustee transfer from the state deferred compensation plan.

New OAR 459-005-0580 provides the parameters for eligibility to obtain restoration of forfeited creditable service or to make certain designated purchases of retirement credit via a trustee-to-trustee transfer. This new rule also provides guidance as to how PERS will treat any excess dollars transferred to PERS in a trustee-to-trustee transfer. Lastly, this rule clarifies that the statutory authorization to make a trustee-to-trustee transfer does not extend the applicable time-frame to obtain restoration of forfeited creditable services or to make certain designated purchases of requirement credit.

Amendments to OAR 459-015-0055 clarify the time frame in which a trustee-to-trustee transfer must be made with respect to a disability retirement. Correct reference in section (3)(a) to ORS 238.462 for the default benefit is a married member does not complete the final selection of the benefit option within 90 days of an approved disability application. Language added in section (6) clarifies when staff is required to pay a benefit to a member approved for disability but the member fails to submit the disability benefit application. Language in section (7) clarifies when a disability retirement benefit is payable.

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

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

\*\*\*\*\*  
**Oregon State Marine Board**  
**Chapter 250**

**Rule Caption:** Establish a speed restriction zone on Foster Reservoir.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-10-11	7–9 p.m.	Sweet Home Senior Center (Jim Riggs Community Ctr.) 880 18th Ave. Sweet Home, OR 97386

**Hearing Officer:** Randy Henry  
**Stat. Auth.:** ORS 830  
**Stats. Implemented:** ORS 830.110 & 830.175  
**Proposed Amendments:** 250-020-0241  
**Last Date for Comment:** 3-10-11, Close of Hearing  
**Summary:** Notwithstanding, the state wide rule, the agency is proposing a rule action which will establish a speed restriction of 5 mph within 100 feet of the Edgewater RV Resort and Marina on Foster Lake in Linn County.  
**Rules Coordinator:** June LeTarte  
**Address:** Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065  
**Telephone:** (503) 378-2617

\*\*\*\*\*  
**Rule Caption:** Eliminate reference to removed Gold Ray and Savage Rapids dams.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-15-11	7–9 p.m.	Jackson County Roads Dept. Auditorium 7520 Table Rock Rd. (Mosquito Lane) White City, OR 97503

**Hearing Officer:** Randy Henry  
**Stat. Auth.:** ORS 830.110, 830.175 & 830.195  
**Stats. Implemented:** ORS 830.110, 830.175 & 830.195  
**Proposed Amendments:** 250-020-0151, 250-021-0040  
**Last Date for Comment:** 3-15-11, Close of Hearing  
**Summary:** This rule action will eliminate the language to reflect the removal of Gold Ray and Savage Rapid dams on the Rogue River. Staff will also gather input on river access issues now that the dams have been removed.  
**Rules Coordinator:** June LeTarte  
**Address:** Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065  
**Telephone:** (503) 378-2617

\*\*\*\*\*  
**Oregon Student Assistance Commission,**  
**Office of Degree Authorization**  
**Chapter 583**

**Rule Caption:** Defines “ability-to-benefit” test and brings rules in alignment with revised statute.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-25-11	9:30 a.m.	670 Hawthorne Ave. SE Salem, OR 97301

**Hearing Officer:** Beverly Boyd  
**Stat. Auth.:** ORS 348.594–348.606  
**Stats. Implemented:** ORS 348.603  
**Proposed Amendments:** 583-030-0011, 583-030-0015  
**Last Date for Comment:** 2-25-11  
**Summary:** Defines “ability-to-benefit” test and brings rules in alignment with revised statute.  
**Rules Coordinator:** Beverly R. Boyd  
**Address:** Student Assistance Commission, Office of Degree Authorization, 1500 Valley River Dr., Suite 100, Eugene, OR 97401  
**Telephone:** (541) 687-7394

\*\*\*\*\*  
**Public Utility Commission**  
**Chapter 860**

**Rule Caption:** In the Matter of Revising Net Metering Rules Regarding Aggregation of Meters on Different Rate Schedules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-9-11	9:30 a.m.	PUC Main Hearing Rm. 550 Capitol St. NE, Salem, OR

**Hearing Officer:** Patrick Power  
**Stat. Auth.:** ORS 183, 756.040, & 757.300  
**Stats. Implemented:** ORS 756.040 & 757.300  
**Proposed Amendments:** 860-039-0005, 860-039-0010, 860-039-0065

**Last Date for Comment:** 3-9-11, Close of Business  
**Summary:** The proposed rule changes address a prohibition in OAR 860-039-0065 against aggregating meters that are on different rate schedules. The proposed rule changes relax that prohibition and allow customer-generators participating in the net-metering program to aggregate meters as specified in the proposed rules.

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 548 on comments and file them by e-mail to the Commission’s Filing Center at [PUC.FilingCenter@state.or.us](mailto:PUC.FilingCenter@state.or.us) and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418. For more information about the Commission’s Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>. Interested persons

## NOTICES OF PROPOSED RULEMAKING

may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16594>

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business March 4, 2011, to request a dial-in number. To present oral comment at the hearing, participants must attend in person.

**Rules Coordinator:** Diane Davis

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

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

\*\*\*\*\*

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

**Rule Caption:** Amends Method for Submitting Required Accounts to Elections Division.

**Stat. Auth.:** ORS 246.150 & 260.262

**Stats. Implemented:** ORS 260.262

**Proposed Amendments:** 165-014-0100

**Last Date for Comment:** 2-24-11

**Summary:** This rule is proposed for amendment to require chief petitioners to submit digital copies of specified accounts not later

than the 10th business day of every month. Additionally, provides for a civil penalty if chief petitions fail to file specified accounts.

**Rules Coordinator:** Brenda Bayes

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

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

\*\*\*\*\*

**Rule Caption:** Prohibits paying or receiving money based on number of signatures or voter registration cards obtained.

**Stat. Auth.:** ORS 246.150

**Other Auth.:** Oregon Constitution Article IV, Sec. 1b

**Stats. Implemented:** ORS 250.045, 260.569 & 260.995

**Proposed Amendments:** 165-014-0260

**Last Date for Comment:** 2-24-11

**Summary:** This rule is proposed for amendment to prohibit the use of express minimum signature requirements (quotas) when paying circulators to gather signatures unless those requirements are disclosed to the Secretary of State as part of required accounts.

**Rules Coordinator:** Brenda Bayes

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

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

# ADMINISTRATIVE RULES

## Board of Examiners for Engineering and Land Surveying Chapter 820

**Rule Caption:** Revises the deadline to submit additional documentation for examination applications.

**Adm. Order No.:** BEELS 2-2010(Temp)

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 12-28-10 thru 6-26-11

**Notice Publication Date:**

**Rules Amended:** 820-010-0215

**Subject:** The temporary rule revises the deadline to submit additional documents for consideration when applying to sit for an examination. These documents may be submitted to the Board office by the issue. However, due to the deadlines imposed by the outside testing provider, the deadlines must occur earlier to allow reasonable time to communicate with applicants so that they may register to sit for the examination.

**Rules Coordinator:** Mari Lopez—(503) 362-2666, ext. 26

### 820-010-0215

#### Form of Applications

(1) Applications for registration as professional engineers, professional land surveyors, professional photogrammetrists and for enrollment as an EI, an LSI, or an application for certification as a water right examiner will be made on printed forms issued by the Board in accordance with Board instructions.

(2) All applications must be accompanied by the appropriate fee.

(3) The following must be submitted to the Board in a single package by the application deadline in OAR 820-010-0442:

(a) Application;

(b) Experience Details form;

(c) Reference Details forms;

(d) Request for Reasonable Accommodations to Oregon Specific Examinations;

(e) Explanation of any work performed in conjunction with any educational program as defined in OAR 820-010-0010; and

(f) If applicable, any evidence of further preparation for re-admittance to a subsequent examination as required in OAR 820-010-0465.

(4) Applications for registration as professional engineers, professional land surveyors, or professional photogrammetrists must be accompanied by a completed take-home examination on the laws and rules in Oregon.

(5) The following documents may be submitted by the issuer to the Board office and received no later than February 1 for the Spring examination administration or no later than August 1 for the Fall examination administration:

(a) Official verification of examinations and/or substantially equivalent examinations successfully passed;

(b) Official verification of current registration by another jurisdiction;

(c) Official transcripts or course-by-course evaluations; or

(d) NCEES Records.

(6) Applicants who do not comply with this rule will be considered failing to complete the application process and subject to OAR 820-010-0300.

Stat. Auth.: ORS 670.310, 672.095, 672.157, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1983, f. 2-28-83, ef. 3-1-83; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; Renumbered from 820-010-0220; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 4-2008, f. & cert. ef. 12-12-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2010, f. & cert. ef. 5-12-10; BEELS 2-2010(Temp), f. & cert. ef. 12-28-10 thru 6-26-11

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**Rule Caption:** To amend rules that clarify requirements related to registration or application for registration. Repeal 1 rule.

**Adm. Order No.:** BEELS 1-2011

**Filed with Sec. of State:** 1-14-2011

**Certified to be Effective:** 1-14-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 820-010-0209, 820-010-0210, 820-010-0212, 820-010-0213, 820-010-0214, 820-010-0215, 820-010-0305, 820-010-0400, 820-010-0417, 820-010-0427, 820-010-0463, 820-010-0505, 820-010-0520

**Rules Repealed:** 820-010-0435, 820-010-0215(T)

**Subject:** OAR 820-010-0209 – Revises the initial fee for certification as a water right examiner and makes the amount consistent with the fee already contained in rule (OAR 820-010-0305).

OAR 820-010-0210 – Expands on the information and documentation required for applications to the fundamental examinations.

OAR 820-010-0212 – Illustrates the fee required (already contained in OAR 820-010-0305 – Fees) with a re-application for the PE examination.

OAR 820-010-0213 – Illustrates the fee required (already contained in OAR 820-010-0305 – Fees) with a re-application for the PLS examination.

OAR 820-010-0214 – Illustrates the fee required (already contained in OAR 820-010-0305 – Fees) with a re-application for the RPP examination.

OAR 820-010-0215 – Revises the deadline to submit documents issued by another jurisdiction, educational institution, or by NCEES.

OAR 820-010-0305 – Revises the fee for the initial professional structural engineering examination application due to a change in the examination; a decrease from \$575.00 to \$100.00.

OAR 820-010-0400 – Deletes the language related to the prior practice period (ended December 31, 2009).

OAR 820-010-0417 – Revises the requirements for registration as a structural engineer.

OAR 820-010-0427 – Clarifies the examination is written and scored by the Colonial States Boards of Surveyor Registration.

OAR 820-010-0463 – Deletes reference to the MOU related to the Forest engineering examination and includes the cutoff score for the photogrammetric mapping examination.

OAR 820-010-0505 – Clarifies that a registration or certification in the “inactive” status for a period of 5 or more years may not be renewed; similar to a registration in the “delinquent” or “retired” status.

OAR 820-010-0520 – Clarifies that a registration or certification in the “inactive” status has a period of 5 years to return to “active” status upon submitting the required documents and fees.

OAR 820-010-0435 – Repeals rule; the Board no longer conducts oral interviews. The authority remains in statute.

**Rules Coordinator:** Mari Lopez—(503) 362-2666, ext. 26

### 820-010-0209

#### Applications for Certification as a Water Right Examiner

(1) Applicants who hold a current registration as a professional engineer, land surveyor, or registered geologist may be considered for certification as a water right examiner.

(2) Before receiving a certificate as a water right examiner, the applicant must successfully pass a written examination on properly performing surveying, mapping, hydraulic computations, and information gathering duties required by ORS 537.798.

(3) Applications must be submitted by the dates specified in OAR 820-010-0442 to be considered by the Board.

(4) Applications submitted by registered geologists will be accompanied by official documentation verifying current registration with the Oregon State Board of Geologist Examiners (OSBGE).

(5) Requests for special accommodations will be made in accordance with OAR 820-010-0443.

(6) Fee for an initial application for certification as a water right examiner is \$105.00.

(7) Fee for a reapplication for certification as a water right examiner is \$40.00.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 1-2011, f. & cert. ef. 1-14-11

### 820-010-0210

#### Application for Enrollment as an Engineering Intern (EI) and Land Surveying Intern (LSI)

Applicants for enrollment as an EI or LSI must submit documentation, compliant with OAR 820-010-0215.

(1) Applications for admission to examination based on educational qualifications must include:



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(a) Application for the Fundamentals of Engineering/Fundamentals of Land Surveying examination.

(b) Official transcripts or evaluation of degree credentials demonstrating completion of a curriculum satisfactory to the Board as defined in OAR 820-010-0225 or 820-010-0226.

(2) Applications for admission to examination based on experience or based on a combination of educational and experience qualifications must include:

(a) Application for the Fundamentals of Engineering/Fundamentals of Land Surveying examination.

(b) Official transcripts or evaluation of degree credentials for those degrees not from an ABET accredited program, if applicable.

(c) Experience Details form.

(d) Three references that meet the requirements of the OAR 820-010-0255;

(A) Qualifying experience accrued by the applicant must be accompanied by a reference that supervised the work product as meeting the definition of engineering as defined in the OAR 820-010-0010.

(B) References must be submitted on the Board approved Reference Details form.

(C) The Board may, for good cause upon written application, reduce the number of references required.

(3) Application must be accompanied by the \$35.00 fee.

(4) Re-application must be accompanied by the \$25.00 fee.

Stat. Auth.: ORS 670.310, 672.105, 672.118 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, cf. 4-15-72; EE 20, f. & cf. 12-15-77; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 2-1999, f. & cert. ef. 9-15-99; BEELS 2-2007, f. & cert. ef. 4-5-07; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0212

### Applications for Registration as Professional Engineers (PE) Based on Examination

(1) Applicants for registration as a professional engineer must submit documentation, compliant with OAR 820-010-0215, to include:

(a) Application for Registration by Examination;

(b) Experience Details form including active practice in engineering;

(c) Five references that meet the requirements of the OAR 820-010-0255, three of whom hold registration in a NCEES jurisdiction;

(A) Qualifying experience accrued by the applicant must be accompanied by a reference that supervised the work product as meeting the definition of engineering as defined in the OAR 820-010-0010.

(B) References must be submitted on the Board approved Reference Details form.

(C) The Board may, for good cause upon written application, reduce the number of references required.

(d) Official transcripts or evaluation of degree credentials for those degrees not from an ABET accredited program.

(e) Official verification of successful completion of the Fundamentals of Engineering examination.

(2) Before receiving a certificate of registration to practice professional engineering in Oregon, each applicant must pass a take-home examination on the laws and rules in Oregon.

(3) Application must be accompanied by the \$225.00 fee.

(4) Re-application must be accompanied by the \$90.00 fee.

Stat. Auth.: ORS 670.310, 672.095, 672.157, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 1-2010, f. & cert. ef. 5-12-10; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0213

### Applications for Registration as Professional Land Surveyors (PLS) Based on Examination

(1) Applicants for registration as a professional land surveyor must submit documentation to include:

(a) Application for Registration by Examination;

(b) Experience Details form including active practice in land surveying;

(c) Five references that meet the requirements of the OAR 820-010-0255, three of whom hold registration in a NCEES jurisdiction;

(A) Qualifying experience accrued by the applicant must be accompanied by a reference that supervised the work product as meeting the definition of land surveying as defined in the OAR 820-010-0010.

(B) References must be submitted on the Board approved Reference Details form.

(C) The Board may, for good cause upon written application, reduce the number of references required.

(d) Official transcripts or evaluation of degree credentials for those degrees not from an ABET accredited program.

(e) Official verification of successful completion of the Fundamentals of Land Surveying examination.

(2) Before receiving a certificate of registration to practice professional land surveying in Oregon, each applicant must pass a take-home examination on the laws and rules in Oregon.

(3) Application must be accompanied by the \$265.00 fee.

(4) Re-applications:

(a) Re-application for both the National (6-hour) examination and the Oregon Specific (4-hour) examination must be accompanied by the \$130.00 fee.

(b) Re-application for the National (6-hour) examination must be accompanied by the \$75.00 fee.

(c) Re-application for the Oregon Specific (4-hour) examination must be accompanied by the \$55.00 fee.

Stat. Auth.: ORS 670.310, 672.095, 672.157, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 1-2010, f. & cert. ef. 5-12-10; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0214

### Applications for Registration as Professional Photogrammetrists (RPP) Based on Examination

(1) Applicants for registration as a professional photogrammetrist must submit documentation to include:

(a) Application for Registration by Examination;

(b) Experience Details form including active practice in photogrammetric mapping;

(c) Five references that meet the requirements of the OAR 820-010-0255, three of whom hold registration in a NCEES jurisdiction;

(A) Qualifying experience accrued by the applicant must be accompanied by a reference that supervised the work product as meeting the definition of photogrammetric mapping as defined in the OAR 820-010-0010.

(B) References must be submitted on the Board approved Reference Details form.

(C) The Board may, for good cause upon written application, reduce the number of references required.

(d) Official transcripts or evaluation of degree credentials for those degrees not from an ABET accredited program.

(e) Official verification of successful completion of the Fundamentals of Land Surveying examination.

(2) Before receiving a certificate of registration to practice professional photogrammetric mapping in Oregon, each applicant must pass a take-home examination on the laws and rules in Oregon.

(3) Application must be accompanied by the \$245.00 fee.

(4) Re-application must be accompanied by the \$110.00 fee.

Stat. Auth.: ORS 670.310, 672.095, 672.157, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 1-2010, f. & cert. ef. 5-12-10; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0215

### Form of Applications

(1) Applications for registration as professional engineers, professional land surveyors, professional photogrammetrists and for enrollment as an EI, an LSI, or an application for certification as a water right examiner will be made on printed forms issued by the Board in accordance with Board instructions.

(2) All applications must be accompanied by the appropriate fee.

(3) The following must be submitted to the Board in a single package by the application deadline in OAR 820-010-0442:

(a) Application;

(b) Experience Details form;

(c) Reference Details forms;

(d) Request for Reasonable Accommodations to Oregon Specific Examinations; and

(e) Explanation of any work performed in conjunction with any educational program as defined in OAR 820-010-0010.

(4) Applications for registration as professional engineers, professional land surveyors, or professional photogrammetrists must be accompanied by a completed take-home examination on the laws and rules in Oregon.

(5) The following documents may be submitted by the issuer to the Board office and received no later than December 15 for the Spring examination administration or no later than June 15 for the Fall examination administration:

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- (a) Official verification of examinations and/or substantially equivalent examinations successfully passed;
  - (b) Official verification of current registration by another jurisdiction;
  - (c) Official transcripts or course-by-course evaluations; or
  - (d) NCEES Records.
- (6) Applicants who do not comply with this rule will be considered failing to complete the application process and subject to OAR 820-010-0300.

Stat. Auth.: ORS 670.310, 672.095, 672.157, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1983, f. 2-28-83, ef. 3-1-83; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; Renumbered from 820-010-0220; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 4-2008, f. & cert. ef. 12-12-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2010, f. & cert. ef. 5-12-10; BEELS 2-2010(Temp), f. & cert. ef. 12-28-10 thru 6-26-11; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0305

### Fees

(1) The Board has determined an outside testing provider will administer examinations on behalf of the Board. In addition to state fees, all approved applicants are charged for the test administration fee in addition to any book or scoring fees or any other examination-related fees. The applicant must pay all these costs in advance to the Board and the outside testing provider. The amount for each specific application is compiled in section (2) of this rule. Where applicable, the initial activation and certificate fee must be included. The total amount for each specific application is compiled in a fee schedule published separately. The amount to be submitted will be equal to a total of items (a) through (c) in this section. Actual dollar amounts for application, initial activation, renewal and certificate are listed in sections (2) and (3) of these rules:

- (a) Fee for application.
  - (b) Fee for initial activation equal to one year renewal (one time fee applies to PE, PLS, RPP, and CWRE only; not applicable to reexamination).
  - (c) Fee for issuance of first certificate (one time fee applies to PE, PLS, RPP, and CWRE only).
- (2) Fees for examination application:
- (a) Initial fundamentals of engineering examination application — \$35.
  - (b) Initial fundamentals of land surveying examination application — \$35.
  - (c) Initial professional engineering (PE) examination application — \$100.
  - (d) Initial professional geotechnical examination application — \$375.
  - (e) Initial professional land surveying examination application — \$140.
  - (f) Initial professional photogrammetric mapping examination application — \$120.
  - (g) Certified Water Right Examiner test application — \$50.
  - (h) Fundamentals of engineering examination re-application — \$25.
  - (i) Fundamentals of land surveying examination re-application — \$25.
  - (j) Professional engineering (PE) examination re-application — \$90.
  - (k) Professional geotechnical examination re-application — \$365.
  - (l) Professional land surveying (PLS) examination re-application — \$130.
  - (m) Oregon law portion of PLS examination re-application — \$55.
  - (n) National portion of PLS examination re-application — \$75.
  - (o) Professional photogrammetric mapping examination re-application — \$110.
  - (p) Certified Water Rights Examiner test re-application — \$40.
  - (q) Proctor Request — \$100.
- (3) Fees for certification, registration, and renewal:
- (a) Professional wall certificate — \$35.
  - (b) Application for registration as a professional engineer — \$250.
  - (c) Application for registration as a professional land surveyor — \$250.
  - (d) Application for registration as a registered professional photogrammetrist — \$250.
  - (e) Temporary permit issued under ORS 672.109 and 672.127 — \$100.
  - (f) Re-issuance of lost or mutilated pocket card — \$10.
  - (g) Issuance of certificate without examination based on experience as provided under ORS 672.255 — \$250.
  - (h) Re-score of an Oregon specific examination item — \$50.
  - (i) Annual renewal of a professional engineering certificate — \$90.

- (j) Annual renewal of a professional land surveyor certificate — \$90.
- (k) Annual renewal of a registered professional photogrammetrist certificate — \$90.

(l) Delinquency renewal fee — \$80 for any part of each two-year renewal period during delinquency.

(m) Fee for reinstatement for inactive or retired registrant or certificate holder — \$225.

(n) Annual renewal of water right examiner certificate — \$20.

(o) Verification of certification(s) and/or registration(s) — \$15.

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

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1980, f. & ef. 5-14-80; EE 4-1981, f. & ef. 12-14-81; EE 2-1984(Temp), f. & ef. 5-7-84; EE 2-1984(Temp), f. & ef. 5-7-84; EE 4-1984, f. & ef. 12-11-84; EE 2-1987, f. & ef. 7-2-87; EE 3-1987, f. & ef. 8-25-87; EE 2-1989, f. 1-3-89, cert. ef. 1-15-89; EE 1-1990(Temp), f. & cert. ef. 5-21-90; EE 1-1991(Temp), f. 8-14-91, cert. ef. 9-1-91; EE 2-1991, f. & cert. ef. 9-23-91; EE 1-1992, f. & cert. ef. 2-3-92; EE 2-1992, f. & cert. ef. 2-4-92; EE 4-1992, f. & cert. ef. 7-22-92; EE 2-1993(Temp), f. & cert. ef. 2-22-93; EE 3-1993, f. & cert. ef. 6-3-93; EE 2-1994, f. & cert. ef. 7-22-94; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 2-1997, f. & cert. ef. 8-6-97; BEELS 3-1998, f. & cert. ef. 5-11-98; BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2000, f. 3-17-00, cert. ef. 3-20-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 3-2002, f. & cert. ef. 11-13-02; BEELS 4-2002, f. & cert. ef. 12-3-02; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 1-2008, f. & cert. ef. 3-12-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2010, f. & cert. ef. 5-12-10; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0400

### Application for Registration as a Geotechnical Engineer

(1) The Board shall grant registration as a geotechnical engineer, as defined in OAR 820-040-0040(2), if an applicant:

- (a) Holds an unexpired, valid Oregon certificate of registration as a professional engineer;
- (b) Passes the geotechnical engineering examination offered by the Board; and
- (c) Submits evidence satisfactory to the Board demonstrating at least four years of qualifying experience in geotechnical engineering, as that term is defined in OAR 820-040-0040(1).

(d) Up to one year of credit may be given in lieu of experience for possession of a post-graduate degree from a Board approved engineering program with major studies in soil engineering. Credit will not be given for possession of a post-graduate degree if that degree was the basis for experience used by the applicant to obtain a certificate of registration as a professional engineer.

(2) "Qualifying experience," as used in subsections (1)(c) of this rule, means having responsible charge of soil engineering projects while registered as a professional engineer and engaged in the practice of geotechnical engineering, as that term is defined in OAR 820-040-0040(1).

(a) The application for registration as a geotechnical engineer must contain a description of the pertinent geotechnical aspects of each project claimed as part of the qualifying experience.

(b) Teaching soil engineering and related courses at a Board approved school of engineering will be considered qualifying experience.

(4) Unless waived by the Board, an applicant for registration as a geotechnical engineer must provide at least three references acceptable to the Board from professional engineers substantiating the applicant's experience in geotechnical engineering.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0417

### Nature of Examination for Structural Engineer (SE)

(1) An applicant to qualify for registration must:

(a) Obtain a passing grade for a written examination in engineering fundamentals for qualification as an EI as covered in OAR 820-010-0420, unless exempted from this examination under 820-010-0455. Such examination may be taken at any scheduled examination period but must be passed in order to be admitted to the branch examination as covered in (1)(b) of this rule; and

(b) Obtain a passing grade for a written examination in a professional branch of engineering covering practical engineering problems in branches listed in OAR 820-010-0450; and

(c) Obtain at least two years of progressive responsibility in structural engineering experience. These two years of structural experience are in addition to the required years of engineering experience required to be registered as a professional engineer. The structural engineering experience must be supervised by a registered professional engineer in the branch of

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structural engineering or a registered professional engineer with substantial structural engineering work experience; and

(d) After receiving a license as an Oregon registered professional engineer, obtain a passing grade for the Structural Examination (buildings portion), administered by NCEES.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 — 672.325

Hist.: BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0427

### Nature of Examination for Registered Professional Photogrammetrist (RPP)

(1) An applicant to qualify for registration must obtain a passing grade for:

(a) A written examination in land surveying fundamentals as covered in OAR 820-010-0430. Such examination may be taken at any scheduled period but must be passed in order to be admitted to the examination as covered in subsection (1)(b) of this rule;

(b) A written examination in practical photogrammetric mapping problems.

(2) The land surveying fundamentals examination is written and scored by NCEES and administered by NCEES Exam Administration Services.

(3) The practical photogrammetric mapping examination is written and scored by the Colonial States Boards of Surveyor Registration (CSBSR) pursuant to a contract entered into between the Oregon Board and the CSBSR. The Oregon Board administers the examination in Oregon.

(4) Before receiving a certificate of registration to practice professional photogrammetric mapping in Oregon, each applicant must pass a take-home examination on the laws and rules in Oregon.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 1-2008, f. & cert. ef. 3-12-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0463

### Cutoff Scores for Examinations

(1) The cutoff scores for the FE, FLS, PE, PLS, and Structural II examinations are established by NCEES.

(2) The cutoff score for the Structural III examination is established by the Washington Board as provided in the Memorandum of Understanding between the Washington Board and the Oregon Board.

(3) The cutoff scores for the acoustical, forest, and four-hour Oregon specific land surveying examinations are 70 points out of 100 points.

(4) The cutoff score for the photogrammetric mapping examination is established by the Colonial States Board of Surveyor Registration (CSBSR).

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0505

### Biennial Renewal of Registration or Certification

(1) Registration as a professional engineer, professional land surveyor, or professional photogrammetrist with the Board is on a biennial renewal schedule. As a condition of registration renewal, registrants must comply with the continuing professional development requirements in OAR 820-010-0635. Certification of completing the required professional development requirements on the CPD Organizational Form and fee must be postmarked or hand delivered by 5:00 p.m. on the day of the expiration date of the registration. The biennial fee to renew a registration is described below:

(a) Professional Engineer — \$180.00;

(b) Professional Land Surveyor — \$180.00;

(c) Professional Photogrammetrist — \$180.00;

(2) Certification as a certified water right examiner is on a biennial renewal schedule. The fee must be postmarked or hand delivered by 5:00 p.m. on the day of the expiration date of the certification. The biennial fee to renew a certification as a water right examiner is \$40.00

(3) A delinquent fee of \$80.00 will be assessed on the first day following the expiration date of each registration or certification, for each biennial renewal period in which payment or certification of completing the required continuing professional development hours is not submitted.

(4) Registrations or certificates in the delinquent or retired status for a period of 5 years or more may not be renewed. Delinquent or retired registrants or certificate holders must re-apply and re-take any applicable examination to obtain their certificate of registration or other certificate after a period of 5 years.

Stat. Auth.: ORS 670.310, 672.160, 672.170, & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2011, f. & cert. ef. 1-14-11

## 820-010-0520

### Registrants or Certificate Holders Not Qualified to Practice

Registrants or certificate holders who are delinquent, retired, inactive, suspended or revoked by the Board, are not authorized to engage in the professional practice of engineering, land surveying, photogrammetric mapping, or the professional activities of a certified water right examiner as defined in ORS Chapter 537 and OAR Chapter 690. Except as provided in section (2), registrants or certificate holders who are delinquent, retired, inactive, suspended or revoked may not hold out as professional engineers, professional land surveyors, professional photogrammetrists, or certified water right examiners.

(1) Delinquent registrants or certificate holders. Registrants or certificate holders become delinquent because they fail, within a period of five years from the renewal date, to renew their certificate of registration or to pay their renewal fees or satisfy the required PDH units. A delinquent registrant or certificate holder may return to active status:

(a) Upon application to the Board;

(b) By paying the delinquent renewal fee required by OAR 820-010-0305(3);

(c) By paying the biennial renewal fee required by OAR 820-010-0505; and

(d) If applicable, by satisfying and submitting proof of completion on a form approved by the Board of all delinquent PDH units, at a rate of 15 PDH units per year delinquent, to a maximum of 30 PDH units as stated in OAR 820-010-0635.

(2) Retired registrants or certificate holders. Registrants or certificate holders may retire once they notify the Board that they are not providing engineering, land surveying, photogrammetric mapping services, or professional activities of a certified water right examiner to the public and they request retired status. Registrants or certificate holders who are retired may not use their seal. However, retired registrants may sign documents, listing after their name the designation “PE (Retired),” “SE (Retired),” “PLS (Retired),” “Photogrammetrist (Retired),” or “CWRE (Retired),” as appropriate. A retired registrant or certificate holder may, within a period of 5 years from retirement, return to active status:

(a) Upon application to the Board,

(b) Successfully pass a take-home examination on the laws and rules in Oregon;

(c) By paying the reinstatement fee required by OAR 820-010-0305(3);

(d) By paying the biennial renewal fee required by OAR 820-010-0505; and

(e) If applicable, by satisfying and submitting proof of completion on a form approved by the Board of 15 PDH units per year for each year (or part of a year) retired, to a maximum of 30 PDH units as stated in OAR 820-010-0635.

(3) Inactive registrants or certificate holders. Registrants or certificate holders may place their license or certification on inactive status if the registrant or certificate holder has suffered a debilitating mental or physical illness, injury or disease that prevents the registrant or certificate holder from engaging in the professional practice. Registrants or certificate holders must request to be placed on inactive status. Registrants or certificate holders making such requests must provide documentation prepared by a licensed physician that the registrant or certificate holder suffers from a specific, named debilitating mental or physical illness, injury or disease that prevents the registrant or certificate holder from engaging in the professional practice, and an estimate of the period of time during when the illness, injury or disease will last or whether it is of an unlimited duration. An inactive registrant or certificate holder may, within a period of 5 years from inactive, return to active status:

(a) Upon application to the Board;

(b) Successfully pass a take-home examination on the laws and rules in Oregon;

(c) By paying the reinstatement fee required by OAR 820-010-0305(3);

(d) By paying the biennial renewal fee required by OAR 820-010-0505; and

(e) If applicable, by satisfying and submitting proof of completion on a form approved by the Board of 15 PDH units per year for each year (or part of a year) inactive, to a maximum of 30 PDH units as stated in OAR 820-010-0635.

Stat. Auth.: ORS 672.255(1)(g)

Stats. Implemented: ORS 672.170(4), 672.180 & 672.255(1)(g)



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Hist.: BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 2-2008, f. & cert. ef. 7-9-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2011, f. & cert. ef. 1-14-11

## Board of Licensed Professional Counselors and Therapists Chapter 833

**Rule Caption:** Revises administrative rules governing license applications through reciprocity.

**Adm. Order No.:** BLPCT 1-2011

**Filed with Sec. of State:** 1-13-2011

**Certified to be Effective:** 2-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 833-020-0011, 833-020-0051

**Subject:** Revises rules governing license application process through reciprocity. Allows substitution of specific academic education and some pre-licensed supervised direct client licensed experience in other state for required Oregon licensure.

**Rules Coordinator:** Becky Eklund—(503) 378-5499, ext. 3

### 833-020-0011

#### Applications

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

(2) Application for licensure must include gender, date of birth, social security number, practice and residence addresses; similar licenses held in other states, and history of professional discipline, litigation, and criminal involvement and be accompanied by:

(a) The non-refundable application fee;

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

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

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

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

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

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

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

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

(b) Required forms are not submitted;

(c) No fee or an insufficient fee is received.

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

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

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

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

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 1-2011, f. 1-13-11, cert. ef. 2-1-11

### 833-020-0051

#### Reciprocity Method

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

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

(3) Application for licensure must be submitted to the Board office in accordance with OAR 833-020-0011.

(4) The application must also include verification of from the sending state that applicant:

(a) Has a current, active license in that state; and

(b) The license is comparable to the Oregon license requested

(c) Applicant's license from other state is not temporary, probationary, expired, revoked, or suspended;

(d) The applicant has not been disciplined, including a reprimand or letter of concern; and

(e) Documentation of the education, clinical experience, and examination requirements for licensure in that state at the time licensure was granted.

(5) The applicant's license in the other state must have:

(a) Required at least a graduate degree in counseling, a graduate degree in marriage and family therapy, or a related degree. A related degree must have systemic coursework for a license as a marriage and family therapist;

(b) Been issued to an applicant whose qualifying degree meets Majority Standards for Graduate Degrees specified in OAR 833 Division 60;

(c) Required passage of a state or national competency exam; and

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

(6) Five years or more of licensed clinical experience in another state may substitute for a maximum of 15 semester or 20 quarter credits of academic education required for licensure. Clinical experience may not substitute for diagnosis training.

(7) Completed supervised clinical experience performing direct client counseling or marriage and family therapy, which must have included no less than:

(a) At least 2,000 hours in at least two years or the equivalent for licensed professional counselor;

(b) At least 2,000 hours earned in at least 3 years for licensed marriage and family therapist.

(8) Five or more years of post license clinical experience may substitute for 1,000 hours of the required, supervised direct client contact hours required for Oregon licensure.

(9) Documentation of acceptance on the national credentials registry for professional counselors may substitute for education and experience requirements for licensure as a professional counselor.

(10) The applicant must meet the examination requirements specified in:

(a) 833-030-0041 for licensure as a professional counselor; or

(b) 833-040-0041 for licensure as a marriage and family therapist.

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

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10;

BLPCT 1-2011, f. 1-13-11, cert. ef. 2-1-11

## Board of Massage Therapists Chapter 334

**Rule Caption:** Amend 09–11 budget, increase some fees, add Board chair stipend.

**Adm. Order No.:** BMT 3-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 334-001-0012, 334-001-0055, 334-010-0033

**Subject:** The Oregon Board of Massage Therapists (Board) is permanently amending the 2009–2011 biennium budget in an effort to prevent revenue shortfall in the current biennia. The Board is permanently amending the stipend rule to address the extraordinary



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amount of additional work conducted specifically by the Board Chair.

The Board is permanently amending the fee schedule in an effort to prevent revenue shortfall in the current and future biennia. The fee charges are as follows:

Active License Renewal (for two years): Current Fee: \$100 – New Fee: \$150.

License Reprint (each): Current Fee: \$5 – New Fee: \$10.

License Verification (each): \$5 – New Fee: \$10.

**Rules Coordinator:** Diana Nott—(503) 365-8657, ext. 1

## 334-001-0012

### Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' 2009–2011 Biennium budget of \$1,500,000.

Stat. Auth.: SB 1127, ORS 183 & 687.121

Stats. Implemented: Section 6, (1) & (2)

Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003, f. & cert. ef. 6-17-03; BMT 2-2005(Temp), f. & cert. ef. 6-24-05 thru 6-30-05; BMT 3-2005, f. & cert. ef. 6-24-05, cert. ef. 7-1-05; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 2-2007, f. & cert. ef. 7-3-07; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11

## 334-001-0055

### Board Member Stipend

(1) The Oregon Board of Massage Therapists hereby adopts a board member stipend of \$100.00 per month for each month a board member serves in their appointment

(2) The Oregon Board of Massage Therapists hereby adopts an additional board chair stipend of \$375.00 per month for each month that a member serves as board chair.

Stat. Auth.: ORS 182.460 & 687.121

Stats. Implemented: ORS 182.460 & 687.121

Hist.: BMT 1-2010, f. & cert. ef. 4-12-10; BMT 2-2010, f. 7-23-10, cert. ef. 7-26-10; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11

## 334-010-0033

### Fees

The fees are:

- (1) \$100 per biennial renewal for initial license;
- (2) \$150 per biennial renewal for active license;
- (3) \$50 per biennial renewal for inactive license;
- (4) \$25 per week, up to a maximum of \$250, for any late renewal;
- (5) \$50 for exam/endorsement application processing;
- (6) \$150 for each practical examination;
- (7) \$100 for mailing list;
- (8) \$10 for license reprint;
- (9) \$10 for license verification; and
- (10) Other administrative fees as allowed by law.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11

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

**Rule Caption:** Amends division 1 to update the established rule-making procedures and agency rules notification guidelines.

**Adm. Order No.:** PAR 1-2011

**Filed with Sec. of State:** 1-11-2011

**Certified to be Effective:** 1-11-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 255-001-0005, 255-001-0010, 255-001-0016

**Subject:** Division 1 is being amended to update the rulemaking procedures and to add guidelines regarding how the Board will provide notice of rule changes.

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

## 255-001-0005

### Notice of Rulemaking: Time and Manner

(1) Prior to the permanent adoption, amendment, or repeal of any rule, the chairperson of the Board or the chair's designee shall give notice of the proposed action at least 21 days prior to the effective date:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360;

(b) By providing a copy of the notice to the legislators specified in ORS 183.335(14) at least 49 days before the effective date of the rule; and

(c) By providing a copy of the notice at least 28 days prior to the effective date to persons on the Board mailing list established pursuant to ORS 183.335(7); and

(d) By providing a copy of the notice to:

(A) Oregon State Bar Bulletin;

(B) Associated Press;

(C) Release Services, County Community Corrections Offices, State of Oregon Department of Corrections;

(D) Oregon District Attorneys Association;

(E) Oregon Criminal Defense Attorneys Association;

(F) All County Public Defender Offices;

(G) All County Law Libraries;

(H) Attorney General's Office;

(I) State Public Defender;

(J) Oregon Supreme Court Law Library;

(K) University of Oregon Law Library;

(L) Northwestern School of Law, Lewis and Clark College;

(M) College of Law, Willamette University;

(N) American Civil Liberties Union;

(O) The Oregonian, Portland, Oregon;

(P) Pendleton Eastern Oregonian, Pendleton, Oregon;

(Q) The Statesman Journal, Salem, Oregon;

(R) Medford Mail Tribune;

(S) The Register Guard, Eugene, Oregon; and

(T) Others upon formal written request of the Board.

(2) When the Board has filed a temporary rule with the Secretary of State's Office, the Board shall provide a copy of the certificate and order and a copy of the temporary rule to the persons on the Board's mailing list, and to those listed in subsection (1)(c) of this section.

(3) Notwithstanding subsection (2) of this section, when the Board has filed a temporary rule with the Secretary of State's Office, newspapers and media service shall only receive a copy of the certificate and order.

(4) Notice pursuant to subsection (1) and (2) of this section shall be provided via electronic transmission, such as e-mail or other electronic technology. Notice via non-electronic means will be available upon request and upon payment of an annual fee of \$15.00. The Board will make reasonable accommodations for individuals with disabilities.

Stat. Auth.: ORS 183.335 & 183.360

Stats. Implemented: ORS 183.335 & 183.360

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 1-1994, f. & cert. ef. 4-4-94; PAR 2-1994, f. 8-1-94, cert. ef. 8-15-94; PAR 1-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2011, f. & cert. ef. 1-11-11

## 255-001-0010

### Rulemaking Procedure

(1) The Board shall adopt all new and revised rules in accordance with the provisions of ORS Chapter 183, the Oregon Attorney General's Model Rules of Procedure and ORS 192.610 to 192.710. The Board will use only those sections of the Model Rules which relate to rulemaking.

(2) The Board shall hold a business meeting, pursuant to Division 20, to consider proposed change(s) in its rules. Public notice of the meeting, and of the intent to consider rule change(s), shall be made pursuant to ORS 192.640(1).

(3) The Board, in its discretion, may limit participation by inmates in the proposed adoption, amendment or repeal of any rule to written submissions.

Stat. Auth.: ORS 183.335(1), ORS 183.335(3)(b), ORS 183.335(3)(c), ORS 192.610(1) – 192.710

Stats. Implemented: 1999 SB 2222

Hist.: 2PB 1-1979, f. & ef. 2-1-79; 2PB 2-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 1-1994, f. & cert. ef. 4-4-94; PAR 8-1999, f. & cert. ef. 11-15-99; PAR 1-2011, f. & cert. ef. 1-11-11

## 255-001-0016

### Obtaining Copies of Board Rules

(1) The Board shall provide a free copy of its rules to all Oregon Department of Corrections institution law libraries and to any state agency or legislative entity that requests a copy. The Board has the discretion to

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determine the method of delivery in all cases. Rules will be provided in electronic format to institution libraries.

(2) Others who desire copies of Board rules shall make their requests in writing.

(a) The Board will charge a fee consistent with OAR 255-015-0015 to cover the costs of filling the request. The Board must receive payment in advance. Inmates who request copies of rules shall send authorization to withdraw funds from their inmate trust account and the Board shall verify that the account contains sufficient funds to cover the cost before providing copies.

(b) There will be no cost for copies of rules in electronic format.

Stat. Auth.: ORS 137.551 & 144

Stat. Implemented: ORS 192.800 - 192.810

Hist.: 2PB 2-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 1-2011, f. & cert. ef. 1-11-11

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**Rule Caption:** Adopting rules to establish procedures for identifying and supervising offenders deemed sexually violent and dangerous.

**Adm. Order No.:** PAR 2-2011

**Filed with Sec. of State:** 1-11-2011

**Certified to be Effective:** 1-11-11

**Notice Publication Date:** 12-1-2010

**Rules Adopted:** 255-060-0018

**Subject:** Per ORS 144.637, the Department of Corrections and the State Board of Parole and Post-Prison Supervision, in consultation with local supervisory authorities, shall jointly adopt rules establishing (1) Procedures for identifying sexually violent dangerous offenders; and (2) Methods of intensive supervision for sexually violent dangerous offenders.

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

## 255-060-0018

### Offenders Eligible for Sexually Violent Dangerous Offender Designation

(1) "Sexually violent dangerous offender" is a person who is being released from custody after serving a sentence of incarceration as a result of conviction for an offense listed in subparagraph (a) of this paragraph, who has psychopathic personality features, sexually deviant arousal patterns or interests and a history of sexual assault, and who the State Board of Parole and Post-Prison Supervision or local supervisory authority finds presents a substantial probability of committing an offense listed in subparagraph (a) of this paragraph.

(a) The offenses to which this rule applies are:

(A) Rape in the first degree and sodomy in the first degree if the victim was:

(i) Subjected to forcible compulsion by the person;

(ii) Under 12 years of age; or

(iii) Incapable of consent by reason of mental defect, mental incapacitation or physical helplessness;

(B) Unlawful sexual penetration in the first degree; and

(C) An attempt to commit a crime listed in (1) or (2) of this subparagraph.

(b) "History of sexual assault" means that a person has engaged in unlawful sexual conduct that:

(A) Is not related to the crime for which the person is currently on parole or post-prison supervision; and

(B) Seriously endangered the life or safety of another person or involved a victim under 12 years of age.

(2) Every six months the Department of Corrections will provide the Board of Parole and Post-Prison Supervision with a list of offenders who have a history of sexual assault as defined in (1)(b) above, are serving a sentence of incarceration as a result of conviction for an offense listed in (1)(a) above, and who are within six months of release from custody.

(3) When any offender convicted as a "dangerous offender" under ORS 161.725 and 161.735 is granted a firm release date by the Board of Parole and Post-Prison Supervision or is otherwise within six months of release from custody, Board of Parole and Post-Prison Supervision staff will screen the offender to determine if the offender's record reveals that the offender was convicted of an offense listed in (1)(a) and has a history of sexual assault as described in (1)(b).

(4) If Board staff determines that an offender has the qualifying conviction and history of sexual assault, the Board of Parole and Post-Prison Supervision will make a finding that the offender is eligible for designation as a sexually violent dangerous offender.

(5) The Board may designate an offender as a sexually violent dangerous offender only if the offender:

(a) Participated in or refused to participate in a psychological evaluation ordered by the Board of Parole and Post-Prison Supervision; and,

(b) Requested an evidentiary hearing in accordance with these rules or waived entitlement to such a hearing.

(6) An offender who has been identified as eligible for designation as a sexually violent dangerous offender designation will receive notice of the offender's eligibility for designation and of the offender's right to request a hearing before the Board of Parole and Post-Prison Supervision to present evidence why the sexually violent dangerous offender finding should not be made.

(7) The Board of Parole and Post-Prison Supervision will provide the offender with a copy of the SVDO-1, Notice of Rights, prior to the evidentiary hearing. Upon receipt of the Notice of Rights the offender may request an evidentiary hearing or waive his or her right to the hearing.

(8) The Board of Parole and Post-Prison Supervision must receive and review the signed SVDO-1 Notice of Rights before an evidentiary hearing is conducted or waived to determine a SVDO finding. A refusal to participate in the hearings process shall also constitute a waiver of the right to a hearing.

(9) The Board of Parole and Post-Prison Supervision will consider any written objections to the psychological evaluation that are submitted by the offender. An offender may elect to waive the right to submit written objections.

(10) The purposes of the evidentiary hearing are to:

(a) Determine whether the offender meets the criteria of a sexually violent dangerous offender as defined in OAR 291-202-0210(1)(a) & (b), and;

(b) Determine if there is a substantial probability of offender's committing one of the offenses listed in OAR 291-202-0210(1)(a).

(11) At the conclusion of the evidentiary hearing, the Board of Parole and Post-Prison Supervision will determine whether the offender should be designated as a sexually violent dangerous offender. A finding that an offender is a sexually violent dangerous offender may be made by two Board of Parole and Post-Prison Supervision members, except in the case of an offender who has been sentenced to life imprisonment or convicted of a crime involving the death of a victim, pursuant to ORS 144.054.

(12) When an offender eligible for designation as a sexually violent dangerous offender has waived the right to an evidentiary hearing, the Board of Parole and Post-Prison Supervision will make the determination whether to designate the offender a sexually violent dangerous offender based on all the information in the record, including any psychological evaluations.

(13) A finding that an offender is a sexually violent dangerous offender will be contained in the offender's original order of supervision or an amended order of supervision.

(14) The community corrections agency supervising an offender found to be a sexually violent dangerous offender shall subject the offender to intensive supervision as defined in OAR 255-005-0005(26).

Stat. Auth.: ORS 144.637

Stat. Implemented: ORS 144.635

Hist.: PAR 2-2011, f. & cert. ef. 1-11-11

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## Board of Pharmacy Chapter 855

**Rule Caption:** Adopt Heath Professional's Service Program rules, clarify rule on electronic prescribing, amend continuing education requirements.

**Adm. Order No.:** BP 12-2010

**Filed with Sec. of State:** 12-23-2010

**Certified to be Effective:** 12-23-10

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 855-011-0005, 855-011-0020, 855-011-0030, 855-011-0040, 855-011-0050

**Rules Amended:** 855-021-0010, 855-041-0065

**Rules Repealed:** 855-011-0005(T), 855-011-0020(T), 855-011-0030(T), 855-011-0040(T), 855-011-0050(T)

**Subject:** (1) The Health Professional's Service Program is the impaired health professionals program established by the Oregon Health Authority pursuant to ORS 676.190. These rules provide a framework for the Board of Pharmacy's participation in the Program and establish a procedure for the Board to refer licensees to the program. The rules also specify a process for the Board to approve

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an independent evaluator and set requirements that must be met by participants. The rules replace the Temporary Rules effective from June 29, 2010.

(2) The amendment to the Continuing Education rule deletes the requirement that 11 hours need to be in “therapeutics”. The Board has added a requirement that one hour be in the topic of Patient Safety or Medication Error Reduction.

(3) ORS 689.515 was revised in 2009 to permit “no substitution” instructions to be electronic or in writing. This amendment to OAR 855-041-0065 brings regulations in line with statute.

Copies of the full text of these rules can be obtained from the Board’s web site, [www.pharmacy.state.or.us](http://www.pharmacy.state.or.us), or by calling the Board office (971) 673-0001.

**Rules Coordinator:** Karen MacLean—(971) 673-0001

## 855-011-0005

### Definitions

When used in this division of rules:

(1) “Health Professionals’ Service Program (the Program)” means the impaired health professional program established by the Oregon Health Authority pursuant to authority granted by ORS 676.190.

(2) “Impaired” means that the licensee is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability, or by reason of a mental health disorder.

(3) “Mental-health disorder” means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom that is identified in the DSM-IV-TR, (published by the American Psychiatric Association). “Mental-health disorder” includes gambling disorders.

(4) “Non-treatment compliance monitoring,” means the non-medical, non-therapeutic services employed by the vendor to track and report the licensee’s compliance with the monitoring agreement.

(5) “Substance Abuse Disorder” means a disorder related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include: substance abuse disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder, etc, as defined in DSM-IV-TR, (published by the American Psychiatric Association) criteria.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 676.200

Hist.: BP 7-2010(Temp), f. & cert. ef. 6-29-10 thru 12-24-10; BP 12-2010, f. & cert. ef. 12-23-10

## 855-011-0020

### Participation in Health Professional’s Service Program

(1) Effective July 1, 2010, the Oregon Board of Pharmacy (Board) will participate in the Program.

(2) The Board may only refer licensees of the Board to the Program if they meet the referral criteria established by the Board.

(3) The Board may refer a licensee to the Program in lieu of or in addition to public discipline.

(4) A licensee who has not been referred to the Program by the Board may participate in the Program as permitted by ORS 676.190(5). Licensees may not refer themselves to the Program unless they certify that, to the best of their knowledge, they are not currently under investigation by the Board.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 676.200

Hist.: BP 7-2010(Temp), f. & cert. ef. 6-29-10 thru 12-24-10; BP 12-2010, f. & cert. ef. 12-23-10

## 855-011-0030

### Procedure to refer Board licensees to the Program

(1) When the Board has information that a licensee may be impaired by alcohol or a substance abuse disorder or dependency, or a mental-health disorder, the Board may consider referring the licensee to the Program.

(2) Before the Board refers a licensee to the Program, the Board shall:

(a) Obtain a copy of a written report that diagnoses the licensee with alcohol or a substance abuse disorder or dependency, or a mental-health disorder and provides treatment options;

(b) Investigate to determine whether the licensee’s professional practice while impaired has presented or presents a danger to the public;

(c) Obtain the licensee’s written agreement to report any arrest for or conviction of a misdemeanor or felony to the Board within three business days after the licensee is arrested or convicted;

(d) Obtain the licensee’s written agreement to pay the costs of participation in the Program, including the cost of laboratory or toxicology tests, treatment, consultation group meetings and evaluations; and

(e) Obtain the licensee’s written consent allowing disclosure and exchange of information between the Program, the Board, the monitoring entity, the licensee’s employers, and evaluators and treatment entities.

(3) The report referred to in subsection (2)(a) of this rule must be prepared by an independent evaluator approved by the Board under OAR 855-011-0040 to evaluate alcohol or a substance abuse disorder or dependency, and mental-health disorders.

(4) The Board may only refer to the Program a licensee who has been diagnosed with alcohol or a substance abuse disorder or dependency, or a mental health disorder.

(5) The Board will consider all relevant factors before determining whether to refer a licensee to the Program. Relevant factors shall include but are not limited to:

(a) Licensee’s disciplinary history;

(b) The severity and duration of the licensee’s impairment;

(c) The extent to which licensee’s practice can be limited or managed to eliminate danger to the public;

(d) The likelihood that licensee’s impairment can be managed with treatment; and

(e) The likelihood that the licensee will follow the conditions of the program.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 676.200

Hist.: BP 7-2010(Temp), f. & cert. ef. 6-29-10 thru 12-24-10; BP 12-2010, f. & cert. ef. 12-23-10

## 855-011-0040

### Approval by the Board of an Independent Evaluator

(1) The Board may approve a person to act as an evaluator provided that the person:

(a) Is licensed as required by the jurisdiction in which they work;

(b) Possesses a master’s degree or a doctorate in a mental health discipline;

(c) Can document training and experience in one of the following:

(A) US Department of Transportation, Substance Abuse Professional Qualification training;

(B) Certification by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission as a Certified Alcohol and Drug Abuse Counselor (CADC) level II or III; or

(C) Board certification in Addiction Medicine by either the American Society of Addiction Medicine or American Board of Psychiatry and Neurology.

(d) Is able to provide a multi-disciplinary assessment and written report describing a licensee’s diagnosis, degree of impairment and treatment options; and

(e) Certifies that, if required, they are willing to defend their evaluation in a court of law.

(2) The Board may not approve an evaluator in a case if, in the Board’s judgment, the evaluator’s judgment is likely to be influenced by a personal or professional relationship with a licensee.

(3) The Board shall maintain a list of approved independent evaluators on the Board’s website or the Board may approve a list of evaluators that meet the above criteria that is approved and published by the Program contractor.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 676.200

Hist.: BP 7-2010(Temp), f. & cert. ef. 6-29-10 thru 12-24-10; BP 12-2010, f. & cert. ef. 12-23-10

## 855-011-0050

### Additional requirements for licensees referred to the Program

(1) In addition to the requirements established by ORS 676.185 to 676.200, a licensee who participates in the Program must:

(a) Participate in the Program for as long as specified in the disciplinary order but not less than two years, except that a licensee who has been enrolled in a prior Board approved program for at least two years may count up to one year of that program towards this requirement;

(b) Meet all conditions of probation specified in the disciplinary order; and

(c) Pay all costs of attendance at non-treatment compliance monitoring group meetings.



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(2) A licensee may petition the Board for early removal from the Program if:

- (a) They are in good standing with the Program;
- (b) They have been in the Program for at least two years; and
- (c) They have complied with all conditions of their Board disciplinary order.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 676.200  
Hist.: BP 7-2010(Temp), f. & cert. ef. 6-29-10 thru 12-24-10; BP 12-2010, f. & cert. ef. 12-23-10

## 855-021-0010

### Continuing Pharmacy Education

(1) In this rule the terms below have the meanings given:

(a) "Patient Safety" means procedures and processes that ensure that the correct patient receives the correct drug in the correct dose, and is counseled appropriately.

(b) "Medication error reduction" means procedures and processes to reduce and avoid adverse events and to ensure that the correct patient receives the correct drug in the correct dose.

(2) A continuing pharmacy education program means classes of post graduate studies, informal study group participation, institutes, seminars, lectures, conferences, workshops, extension study, correspondence courses, teaching, planned and professional meetings, self study courses, cassette or audio visual tape/slides or materials, and other self instruction units:

(a) A program shall consist of therapeutics, or pharmacy and drug law or other aspects of health care. At least one hour of continuing education credit must be earned in the area of pharmacy and drug law. Effective from June 1, 2011, at least one hour of continuing education credit must be earned in the area of patient safety or medication error reduction.

(b) Programs shall provide for examinations or other methods of evaluation to assure satisfactory completion by participants.

(c) The person or persons who are to instruct or who are responsible for the delivery or content of the program shall be qualified in the subject matter by education and experience.

(3) Continuing pharmacy education programs shall be approved by the Board of Pharmacy. Application for approval shall be made on and in accordance with forms established by the Board. The forms shall require information relating to:

- (a) Name of provider or sponsor;
- (b) Type of program offered;
- (c) Description of subject matter;
- (d) Number of contact hours offered;
- (e) Total number of contact hours in therapeutics or pharmacy and drug law or other aspects of health care;
- (f) Method of determining satisfactory completion of program;
- (g) Dates and location of program;
- (h) Name and qualification of instructors or other persons responsible for the delivery or content of the program.

(4) CE programs are not required to carry approval of American Council on Pharmaceutical Education (ACPE). Programs presented by providers approved by the American Council on Pharmacy Education (ACPE) are generally accepted, however, the Board reserves the right to determine the number of hours allowed or to disapprove such programs.

(5) Providers shall provide attendees with proof of attendance that shows the date and number of contact hours provided. Providers must maintain attendance lists for three years.

(6) Continuing pharmacy education credit accumulated in excess of the required 15 contact hours for annual license renewal cannot be carried forward.

(7) A maximum of 10 hours (1.0 CEU) may be earned in any licensing year by preparing and presenting CE programs. Pharmacists presenting CE programs may earn one hour (0.1 CEU) for preparation time of one hour or more, plus credit for the actual contact hour time of the presentation. A pharmacist must show content of the course, and a description of the intended audience (e.g., pharmacists, physicians, nurses). Public service programs, such as presentations to school children or service clubs, are not eligible for continuing education credit.

(8) Pharmacists taking post graduate studies applicable to graduate or professional degrees may submit the course syllabus and evidence of satisfactory completion of the course for continuing education credit approval by the Board.

(9) The Board may approve up to 14 (fourteen) hours of CE credit for licensees who have successfully completed Disease State Management courses certified by the NIPCO, NISPC, BPST, or other appropriate certified programs sponsored by established credentialing groups.

(10) Board members or staff may attend CE programs for the purpose of evaluating content, format and appropriateness of material for Continuing Pharmacy Education credit. Subsequent programs by CE providers whose current programs are deemed deficient by on-site evaluation may be required to obtain prior approval by the Board. The Board will provide feedback to CE providers regarding evaluated CE presentations.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.285  
Hist.: IPB 45, f. & ef. 7-6-76; IPB 2-1979(Temp), f. & ef. 10-3-79; IPB 2-1980, f. & ef. 4-3-80; IPB 2-1984, f. & ef. 3-7-84; IPB 1-1986, f. & ef. 6-5-86; PB 10-1987, f. & ef. 12-8-87; PB 3-1991, f. & cert. ef. 9-19-91; PB 4-1992, f. & cert. ef. 8-25-92; BP 5-2000(Temp), f. 6-20-00, cert. ef. 6-20-00 thru 10-27-00; Administrative correction 6-21-01; BP 2-2004, f. 5-21-04 cert. ef. 6-1-04; BP 12-2010, f. & cert. ef. 12-23-10

## 855-041-0065

### Requirements for Prescriptions — Prescription Refills

Prescriptions, prescription refills, and drug orders must be correctly dispensed in accordance with the prescribing practitioner's authorization. When a prescription is transmitted orally, both the receiving pharmacist's name or initials and the name of the person transmitting must be noted on the prescription.

(1) Each pharmacy must document the following information:

(a) The name of the patient for whom, or the owner of the animal for which, the drug is dispensed;

(b) The full name and, in the case of controlled substances, the address and the Drug Enforcement Administration registration number of the practitioner or other number as authorized under rules adopted by reference under rule OAR 855-080-0085;

(c) If the prescription is for an animal, the species of the animal for which the drug is prescribed;

(d) The name, strength, dosage forms of the substance, quantity prescribed and, if different from the quantity prescribed, the quantity dispensed;

(e) The directions for use, if given by the practitioner;

(f) The date of filling, and the total number of refills authorized by the prescribing practitioner; and

(2) In accordance with ORS 689.515(3), a practitioner may specify in writing, by a telephonic communication or by electronic transmission that there may be no substitution for the specified brand name drug in a prescription.

(a) For a hard copy prescription issued in writing or a prescription orally communicated over the telephone, this instruction may use any one of the following phrases or notations:

(A) No substitution;

(B) N.S.;

(C) Brand medically necessary;

(D) Brand necessary;

(E) Medically necessary;

(F) D.A.W. (Dispense As Written); or

(G) Words with similar meaning.

(b) For an electronically transmitted prescription, the prescriber or prescriber's agent shall clearly indicate substitution instructions by way of the text (without quotes) "brand medically necessary" or words with similar meaning, in the electronic prescription drug order, as well as all relevant electronic indicators sent as part of the electronic prescription transmission.

(c) Such instructions shall not be default values on the prescription.

(3) Where refill authority is given other than by the original prescription, documentation that such refill authorization was given, the date of authorization, and name of the authorizing prescriber or the prescriber's agent must be recorded. This documentation must be readily retrievable. Prescriptions for controlled substances in Schedules III and IV are limited to five refills or six months from date of issue, whichever comes first.

(4) If the practitioner is not available and in the professional judgment of the pharmacist an emergency need for the refill of a prescription drug has been demonstrated, the pharmacist may dispense a sufficient quantity of the drug consistent with the dosage regimen, provided it is not a controlled substance, to last until a practitioner can be contacted for authorization, but not to exceed a 72-hour supply. The practitioner shall be promptly notified of the emergency refill.

(5) Each refilling of a prescription must be accurately documented, readily retrievable, and uniformly maintained for three years. This record must include:

(a) The identity of the responsible pharmacist;

(b) Name of the patient;

(c) Name of the medication;

(d) Date of refill; and

(e) Quantity dispensed.



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(6) After two years from date of issue, a prescription for a non-controlled substance becomes invalid and must be re-authorized by the prescriber. When used alone as a prescription refill designation the abbreviation, "PRN" for a non-controlled substance means that the medication can be refilled in proper context for a period of one year. When this abbreviation is used alone as a means to authorize refills for a controlled substance, the medication can be refilled in proper context for a period of six months or five refills, whichever comes first. When this abbreviation is used in conjunction with a definite time period, or a specific number of refills, the non-controlled medication can be refilled in proper context for a period not to exceed two years. The prescription shall not be refilled out of context with the approximate dosage schedule unless specifically authorized by the prescriber. A "non-controlled substance" means those drugs defined as "legend" pursuant to ORS 689.005(29) but does not include those drugs or substances controlled under the jurisdiction of the United States Department of Justice Drug Enforcement Administration.

(7) Prescriptions must be labeled with the following information:

- (a) Name, address and telephone number of the pharmacy;
  - (b) Date;
  - (c) Identifying number;
  - (d) Name of patient;
  - (e) Name of drug, strength, and quantity dispensed; when a generic name is used, the label shall also contain the name of the manufacturer or distributor;
  - (f) Directions for use by the patient;
  - (g) Name of practitioner;
  - (h) Required precautionary information regarding controlled substances;
  - (i) Such other and further accessory cautionary information as required for patient safety;
  - (j) An expiration date after which the patient should not use the drug or medicine. Expiration dates on prescriptions must be the same as that on the original container unless, in the pharmacist's professional judgment, a shorter expiration date is warranted. Any drug bearing an expiration date shall not be dispensed beyond the said expiration date of the drug; and
  - (k) Any dispensed prescription medication, other than those in unit dose or unit of use packaging, shall be labeled with its physical description, including any identification code that may appear on tablets and capsules.
- (8) Upon written request and for good cause, the Board may waive any of the requirements of this rule. A waiver granted under this section shall only be effective when it is issued by the Board in writing.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.505 & 689.515

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; 1PB 1-1986, f. & ef. 6-5-86; PB 8-1987, f. & ef. 9-30-87; PB 10-1989, f. & cert. ef. 7-20-89; PB 1-1991, f. & cert. ef. 1-24-91; PB 4-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; PB 3-1997(Temp), f. & cert. ef. 11-12-97; BP 1-1998(Temp), f. & cert. ef. 1-27-98 thru 5-4-98; BP 2-1998, f. & cert. ef. 3-23-98; BP 2-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 2-2000, f. & cert. ef. 2-16-00; BP 3-2000, f. & cert. ef. 2-16-00; BP 6-2000, f. & cert. ef. 6-29-00; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 12-2010, f. & cert. ef. 12-23-10

## Bureau of Labor and Industries Chapter 839

**Rule Caption:** Conforms allowable garnishment processing fee rules with legislation.

**Adm. Order No.:** BLI 22-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 839-001-0200, 839-020-0027

**Subject:** ORS 18.736, adopted by the 2003 Legislature, permits employers to deduct a "processing fee" in a specified amount from the wages of debtor employees/garnishors. OAR 839-001-0200 and 839-020-0027 were adopted in 2003 and 2004 to include these fees as amounts that may be deducted from employee wages under the Wage Collection and Minimum Wage laws. The amount of the processing fee in ORS 18.736 was amended by the 2009 legislature. OAR 839-001-0200 and 839-00-0027 are being amended, therefore to reflect this amendment.

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

### 839-001-0200

#### Deductions for Garnishment Processing Fee

(1) If a garnishee that employs a debtor is required to make any payment under a writ of garnishment by reason of wages payable to the debtor, the garnishee may collect a processing fee as provided pursuant to ORS 18.736 for each week of wages, or fraction of a week of wages, for which a payment is made under the provisions of ORS 18.735. The processing fee must be collected after the last payment is made under the writ. The fee shall be withheld from the wages of the debtor, and is in addition to the amounts withheld for payment to the garnishor under the writ or under any other writ delivered to the garnishee.

(2) The fee provided for in this section may not be collected if withholding of the fee would reduce the debtor's net disposable income below the minimum amount prescribed by ORS 18.385.

Stat. Auth.: ORS 651.060(4), 652, 653 & HB 3544 (2003 OL)

Stats. Implemented: ORS 18.838, 652.150 & 653.261(1)

Hist.: BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04; BLI 22-2010, f. 12-30-10, cert. ef. 1-1-11

### 839-020-0027

#### Deductions for Garnishment Processing Fee

(1) If a garnishee that employs a debtor is required to make any payment under a writ of garnishment by reason of wages payable to the debtor, the garnishee may collect a processing fee as provided pursuant to ORS 18.736 for each week of wages, or fraction of a week of wages, for which a payment is made under the provisions of ORS 18.735. The processing fee must be collected after the last payment is made under the writ. The fee shall be withheld from the wages of the debtor, and is in addition to the amounts withheld for payment to the garnishor under the writ or under any other writ delivered to the garnishee.

(2) The fee provided for in this section may not be collected if withholding of the fee would reduce the debtor's net disposable income below the minimum amount prescribed by ORS 18.385.

Stat. Auth.: ORS 651.060(4), 652, 653 & HB 3544(2003 legislature)

Stats. Implemented: ORS 18.838, 652.150 & 653.261(1)

Hist.: BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04; BLI 22-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Conforms prevailing Wage Rate rules to legislation; clarifies definition of "apprentice"; amends contract specifications requirement.

**Adm. Order No.:** BLI 23-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 839-025-0004, 839-025-0013, 839-025-0020, 839-025-0035, 839-025-0060, 839-025-0100, 839-025-0230

**Subject:** The amended rules conform the agency's PWR rules to the provisions of HB 3651, passed by the 2010 Legislature, amending the definition of "public works" in the PWR law to include solar construction and installation projects on property owned by a public body, regardless of whether of not funds of a public agency are used. The proposed rule amendments also clarify that in order for workers to qualify and be paid as apprentices or trainees under the PWR law, they must be employed by "registered training agents" pursuant to the standards of the apprenticeship/training program pursuant to ORS 660; the Apprenticeship and Training law. In addition, the rule amendments permit contracting agencies to provide in the contract specifications for projects subject to both the state PWR law and the federal Davis-Bacon Act that the applicable state prevailing wage rates are those that are in effect at the time the applicable federal prevailing wage rates are effective. And finally, rule amendments provide that rate reference requirements in the contract specification are met if such references include Uniform Resource Locator (URL) information for a webpage or webpages showing the title of each applicable wage rates publication or determination and the date of each publication or determination as well as the date of any applicable amendments.

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

### 839-025-0004

#### Definitions

As used in OAR chapter 839, division 025, unless the context requires otherwise:

- (1) "Apprentice" means:

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(a) A person who is individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Office of Apprenticeship (OA), or with any state apprenticeship agency recognized by OA, and who is employed by a registered training agent pursuant to ORS 660.010(10) and is working pursuant to the standards of the apprentice's apprenticeship program; or

(b) A person in probationary employment as an apprentice in such an apprenticeship program, but who is not individually registered in the program, but who has been certified by the OA or a state apprenticeship agency to be eligible for probationary employment as an apprentice, and who is employed by a registered training agent pursuant to ORS 660.010 (10) and is working pursuant to the standards of the apprentice's apprenticeship program.

(2) "The Basic Hourly Rate of Pay" or "Hourly Rate" means the rate of hourly wage, excluding fringe benefits, paid to the worker.

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

(4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries, or designee.

(5) "Construction" means the initial construction of buildings and other structures, or additions thereto, and of highways and roads. "Construction" does not include the transportation of material or supplies to or from the public works project by employees of a construction contractor or construction subcontractor.

(6) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.

(7) "Employ" includes to suffer or permit to work.

(8) "Fringe benefits" means the amount of:

(a) The rate of contribution irrevocably made on a regular basis and not less often than quarterly by a contractor or subcontractor to a trustee or to a third person pursuant to a plan, fund or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which is committed in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state or local law to provide any of such benefits. Other bona fide fringe benefits do not include reimbursement to workers for meals, lodging or other travel expenses, nor contributions to industry advancement funds (CIAF for example).

(9)(a) "Funds of a public agency" includes any funds of a public agency that are directly or indirectly used, as described below.

(A) "Directly used funds of a public agency" means revenue, money, or that which can be valued in money collected for a public agency or derived from a public agency's immediate custody and control, and, except as provided in ORS 279C.810(1)(a)(H) and (J) and subsection (b) of this section, includes but is not limited to any money loaned by a public agency, including the loan of proceeds from the sale of conduit or pass-through revenue bonds for the specific purpose of financing a project, and public property or other assets used as payment for all or part of a project.

(B) "Indirectly used funds of a public agency" means, except as provided in subsection (b) of this section, that a public agency ultimately bears the cost of all or part of the project, even if a public agency is not paying for the project directly or completing payment at the time it occurs or shortly thereafter. A public agency does not indirectly use funds of a public agency when it elects not to collect land rent that is due. Examples of when an agency "ultimately bears the cost" of all or part of a project include but are not limited to:

(i) Amortizing the costs of construction over the life of a lease and paying these costs with funds of a public agency during the course of the lease;

(ii) A public agency subsidizing the costs of construction that would normally be borne by the contractor;

(iii) Using insurance proceeds that belong to a public agency to pay for construction. Insurance proceeds represent "money collected for the custody and control of a public agency" and therefore are funds of a public agency, whether the contractor obtains payment directly from the insurance company or the public agency; or

(iv) Using or creating a private entity as a conduit for funding a project when the private entity is in fact an alter ego of the public agency.

(b) "Funds of a public agency" does not include:

(A) Funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction, reconstruction, major renovation or painting;

(B) Building and development permit fees paid or waived by the public agency;

(C) Tax credits or tax abatements;

(D) Land that a public agency sells to a private entity at fair market value;

(E) The difference between:

(i) The value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land; and

(ii) The fair market value of the land if the land is not subject to the limitations described in subparagraph (i) of this paragraph;

(F) Staff resources of the public agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;

(G) Staff resources of the public agency used to design or inspect one or more components of a project;

(H) Moneys derived from the sale of bonds that are loaned by a state agency to a private entity, unless the moneys will be used for a public improvement;

(I) Value added to land as a consequence of a public agency's site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses the public agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or

(J) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS Chapter 289 or 441.525 to 441.595, unless the bonds or loans will be used for a public improvement.

(10) "Housing" has the meaning given that term in ORS 456.055.

(11) "Major renovation" means the remodeling or alteration of buildings and other structures within the framework of an existing building or structure and the alteration of existing highways and roads, the contract price of which exceeds \$50,000.

(12) "Nonprofit organization," as used in section (9)(b)(A) of this rule, means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(13) "Normal business hours" means the hours during which the office of the contractor or subcontractor is normally open for business. In the absence of evidence to the contrary, the Division will consider the hours between 8:00 a.m. and 5:00 p.m., excluding the hours between 12:00 noon and 1:00 p.m., on weekdays as normal business hours.

(14) "Overtime" means all hours worked:

(a) On Saturdays;

(b) On the following legal holidays:

(A) Each Sunday;

(B) New Year's Day on January 1;

(C) Memorial Day on the last Monday in May;

(D) Independence Day on July 4;

(E) Labor Day on the first Monday in September;

(F) Thanksgiving Day on the fourth Thursday in November;

(G) Christmas Day on December 25.

(c) Over 40 hours in a week; and either

(d) Over eight (8) hours in a day; or

(e) Over 10 hours in a day provided:

(A) The employer has established a work schedule of four consecutive days (Monday through Thursday or Tuesday through Friday) pursuant to OAR 839-025-0034; and

(B) The employer operates in accordance with this established work schedule.

(15) "Overtime rate" means the basic hourly rate of pay multiplied by one and one-half.

(16) "Overtime wages" means the overtime hours worked multiplied by the overtime rate.

(17) "Person" includes a public or private corporation, a partnership, a sole proprietorship, a limited liability company, a government or governmental instrumentality.

(18) "Prevailing wage rate claim" means a claim for wages filed by a worker with the Division.

(19) "Public agency" means the State of Oregon or any political sub-

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division thereof or any county, city, district, authority, public corporation or entity and any instrumentality thereof organized and existing under law or charter.

(20)(a) "Public work," "public works" or "public works project" includes but is not limited to:

(A) Roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest;

(B) A project for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a public agency; or

(C) A project for the construction of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency; or

(D) A device, structure, or mechanism, or a combination of devices, structures, or mechanisms that:

(i) Uses solar radiation as a source for generating heat, cooling, or electrical energy; and

(ii) Is constructed or installed, with or without using funds of a public agency, on land, premises, structures, or buildings that a public agency owns, regardless of the total project cost.

(b) "Public works" does not include:

(A) The reconstruction or renovation of privately owned property that is leased by a public agency; or

(B) The renovation of publicly owned real property that is more than 75 years old by a private nonprofit entity if:

(i) The real property is leased to the private nonprofit entity for more than 25 years;

(ii) Funds of a public agency used in the renovation do not exceed 15 percent of the total cost of the renovation; and

(iii) Contracts for the renovation were advertised or, if not advertised, were entered into before July 1, 2003, but the renovation has not been completed on or before July 1, 2007.

(21) "Public works contract" or "contract" means any contract, agreement or understanding, written or oral, into which a public agency enters for any public work.

(22) "Reconstruction" means highway and road resurfacing and rebuilding, the restoration of existing highways and roads, and the restoration of buildings and other structures.

(23) "Reconstruction or renovation of privately owned property which is leased by a public agency" includes improvements of all types within the framework or footprint of an existing building or structure.

(24)(a) "Residential construction project" means a public works project for the construction, reconstruction, major renovation or painting of a single family house or apartment building of not more than four (4) stories in height and all incidental items such as site work, parking areas, utilities, streets and sidewalks pursuant to the U.S. Department of Labor's "All Agency Memorandum No. 130" -- "Application Of The Standard of Comparison 'Projects Of a Character Similar' Under the Davis-Bacon and Related Acts" dated March 17, 1978. (See Appendix 6.)

(b) Notwithstanding the provisions of subsection (a) of this section, where it is determined that a different definition of "residential construction" has been adopted by local ordinance or code, or that the prevailing practice of a particular trade or occupation regarding what is considered "residential construction" differs from the U.S. Department of Labor definition of residential construction, the commissioner may consider such information in determining a project to be a "residential construction project."

(25) "Site of work" is defined as follows:

(a) The site of work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed, and other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site.

(b) Except as provided in subsection (c) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, are part of the site of work provided they are dedicated exclusively, or nearly so, to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them. Such facilities which are established by a supplier of materials for the project after the opening of bids are deemed to be dedicated exclusively to the performance of the contract or project.

(c) Not included in the site of work are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, and similar facilities of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the site of work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract or project.

(26) "Special wage determination" means a wage determination made at the request of a public agency and which is applicable only to specific job classes. A special wage determination is issued in those cases where there is no current wage determination applicable to specific job classes and the use of such job classes is contemplated on a public works project.

(27) "Trade" or "occupation" is defined in accordance with the prevailing practices of the construction industry in Oregon.

(28) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Office of Apprenticeship (OA), as meeting its standards for on-the-job training programs, and which has been so certified by that office, and who is employed by a registered training agent pursuant to ORS 660.010(10) and is working pursuant to the standards of the trainee's program.

(29) "Training agent" means an employer that is registered with a local joint committee and the Apprenticeship and Training Division of the Bureau of Labor and Industries.

(30) "Wage determination" includes the original decision and any subsequent amendments made by the commissioner in accordance with ORS 279C.815.

(31) "Wages" or "Prevailing Wages" means the basic hourly rate of pay and fringe benefits as defined in sections (2) and (8) of this rule.

(32) "Worker" means a person employed on a public works project and whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental, professional or managerial. The term "worker" includes apprentices, trainees and any person employed or working on a public works project in a trade or occupation for which the commissioner has determined a prevailing rate of wage. (See OAR 839-025-0035.)

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

Stat. Auth.: ORS 279C & 651.060

Stats. Implemented: ORS 279C.800, 279C.870

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BLI 15-2001, f. & cert. ef. 11-14-01; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0004, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06 thru 11-10-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11

## 839-025-0013

### Notice of Public Works Form

(1) The notification form required by ORS 279C.835 is the Notice of Public Works form, **WH-81**.

(2) Except as provided in sections (4), (5), and (6) of this rule, the public agency must file the Notice of Public Works form, **WH-81**, with the Prevailing Wage Rate Unit within 30 days after the date a public works contract is awarded.

(3) The Notice of Public Works form, **WH-81**, must be accompanied by:

(a) payment of the fee required pursuant to ORS 279C.825; and

(b) a copy of the disclosure of first-tier subcontractors submitted to the public agency by the contractor if required pursuant to ORS 279C.370 and if a public agency awards a contract to a contractor for a public works project.

(4) When a project is a public works project pursuant to ORS 279C.800(6)(a)(B) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency providing public funds for the project at the time the public agency commits to the provision of funds for the project.

(5) When a project is a public works project pursuant to ORS 279C.800(6)(a)(C) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency when the agency enters into an agreement to occupy or use the completed project.



# ADMINISTRATIVE RULES

(6) When a project is a public works project pursuant to ORS 279C.800(6)(a)(D) and no public agency awards a contract to a contractor for the project, the Notice of Public Works form shall be filed by the public agency that owns the land, premise(s), structure(s) or building(s) on which the solar radiation device will be constructed or installed at the time the public agency enters into an agreement authorizing the construction or installation of the solar radiation device.

(7) Public agencies are not required to file a Notice of Public Works form when the contract awarded is not regulated under the provisions of ORS 279C.800 to 279C.870.

[ED. NOTE: Forms and Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0013, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11

## 839-025-0020

### Public Works Contracts and Contract Specifications; Required Conditions

(1) For purposes of this rule:

(a) "Construction Manager/General Contractor contract" (or "CM/GC contract") means a contract that typically results in a general contractor/construction manager initially undertaking various pre-construction tasks that may include, but are not limited to: design phase development, constructability reviews, value engineering, scheduling, and cost estimating, and in which a guaranteed maximum price for completion of construction-type work is typically established by amendment of the initial contract, after the pre-construction tasks are complete or substantially complete. "CM/GC" refers to the general contractor/construction manager under this form of contract. Following the design phase, the CM/GC may then act as a General Contractor and begin the subcontracting process. The CM/GC typically coordinates and manages the construction process, provides contractor expertise, and acts as a member of the project team.

(b) "Construction specifications" include the detailed description of physical characteristics of the improvement, design details, technical descriptions of the method and manner of doing the work, quantities or qualities of any materials required to be furnished, descriptions of dimensions, required units of measurement, composition or manufacturer, and descriptions of any quality, performance, or acceptance requirements.

(2) Every public works contract must contain the following:

(a) A condition or clause that, if the contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public agency may pay such claim and charge the amount of the payment against funds due or to become due the contractor by reason of the contract (Reference: ORS 279C.515);

(b) A condition that no person will be employed for more than 10 hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed must be paid at least time and one-half the regular rate of pay for all time worked:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540;

(c) A condition that an employer must give notice to employees who work on a public works contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work (Reference: ORS 279C.520); and

(d) A condition that the contractor must promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service (Reference: ORS 279C.530).

(3) Every public works contract and subcontract must contain a provision that each worker in each trade or occupation employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the contract, must be paid not less than the applicable state prevailing rate of wage, or the applicable federal prevailing rate of wage, whichever is higher.

(4)(a) The specifications for every public works contract must contain a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.). Except as provided in subsection (c) of this section and sections (6) and (7) of this rule, the existing rate of wage is the rate in effect at the time the initial specifications were first advertised for bid solicitations.

(b) If a public agency is required under subsection (a) of this section or section (6) of this rule to include the state and federal prevailing rates of wage in the specifications for a contract for public works, the public agency also shall include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815(2)(b).

(c) Pursuant to ORS 279C.838(4) and notwithstanding ORS 279C.830(1), if the contract is subject to both ORS 279C.800 to 279C.870 and the Davis Bacon Act (40 U.S.C. 3141 et seq.), the public agency may provide in the specifications for the contract a single date to be used to establish both the "existing state prevailing rate of wage" and the "applicable federal prevailing rate of wage" that is consistent with the federal requirements under 29 CFR 1.6.

(5)(a) The provisions described in sections (3) and (4), and sections (6) and (7) if applicable, must be included in all specifications for each contract awarded on the project, regardless of the price of any individual contract, so long as the combined price of all contracts awarded on the project is \$50,000 or more (Reference: ORS 279C.830).

(b) A statement incorporating the applicable prevailing wage rate publication and any amendments thereto or Davis-Bacon wage rate determination into the specifications by reference will satisfy these requirements. Except as provided in subsection (c), such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments.

(c) When the prevailing wage rates are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates. Such reference must include the title of the applicable wage rates publication or determination and the date of the publication or determination as well as the date of any applicable amendments. The reference requirements of this subsection will be satisfied if such reference includes Uniform Resource Locator (URL) information for a webpage or webpages showing the title of each applicable wage rates publication or determination and the date of each publication or determination as well as the date of any applicable amendments.

(6) When a public agency is a party to a CM/GC contract, the CM/GC contract becomes a public works contract either when the contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works or when the CM/GC contract enters the construction phase, whichever occurs first. The prevailing wage rate in effect at that time shall apply and must be included with the construction specifications for the CM/GC contract. For example, the CM/GC will have a binding and enforceable obligation to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement after the public agency and CM/GC commit to the guaranteed maximum price. For purposes of this rule, the CM/GC contract enters the construction phase when the agency first authorizes the performance of early construction, reconstruction, major renovation or painting work directly related to the improvement project.

(7) A public works project described in ORS 279C.800(6)(a)(B), (C), or (D) that is not a CM/GC contract subject to section (6) of this rule is subject to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a private entity for the project. After that time, the specifications for any contract for the public works shall include the applicable prevailing rate of wage.

(8) If a project is a public works of the type described in ORS

# ADMINISTRATIVE RULES

279C.800(6)(a)(B), (C), or (D), a public agency will be deemed to have complied with the provisions of ORS 279C.830 if the public agency requires compliance with the provisions of section (5) of this rule in any agreement entered into by the public agency committing to provide funds for the project, to occupy or use the completed project, or authorizing the construction or installation of a solar radiation device.

(9) Public agencies may obtain, without cost, a copy of the existing prevailing rate of wages for use in preparing the contract specifications by contacting the Prevailing Wage Rate Unit or any office of the bureau.

Stat. Auth.: ORS 279C & 651.060

Stats. Implemented: ORS 279C.800–279C.870

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97; BL 1-1998, f. & cert. ef. 1-5-98; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0020, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 19-2006(Temp), f. 5-12-06, cert. ef. 5-15-06 thru 11-10-06; BLI 39-2006, f. 11-8-06, cert. ef. 11-10-06; BLI 2-2007, f. & cert. ef. 1-23-07; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11

## 839-025-0035

### Payment of Prevailing Rate of Wage

(1) Every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed.

(2) When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.), if the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay no less than the state prevailing rate of wage as determined under ORS 279C.815.

(3) Every person paid by a contractor or subcontractor in any manner for the person's labor in the construction, reconstruction, major renovation or painting of a public work is employed and must receive no less than the applicable prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.

(4) Persons employed on a public works project and who are spending more than 20% of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature are workers and must be paid the applicable prevailing rate of wage. Mental or managerial duties include, but are not limited to, administrative, executive, professional, supervisory or clerical duties.

(5) Persons employed on a public works project for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) are not workers required to be paid the applicable prevailing rate of wage unless the employment of such persons is performed in connection with and at the site of the public works project.

(6) Except as provided in ORS 279C.838, persons employed on a public works project who are employed by a commercial supplier of goods or materials must be paid no less than the applicable prevailing rate of wage when the work is performed at the "site of work" as that term is defined in OAR 839-025-0004(25) or when the work is performed in fabrication plants, batch plants, borrow pits, job headquarters, tool yards or other such places that are dedicated exclusively or nearly so to the public works project.

(7) Except as provided in ORS 279C.838, persons employed on a public works project by the construction contractor or construction subcontractor to transport materials or supplies to or from the public works project are required to be paid the applicable prevailing wage rate for work performed in connection with the transportation of materials or supplies at the "site of work" as that term is defined in OAR 839-025-0004(25).

(8) Persons employed on a public works project for service work as opposed to construction work are not workers required to be paid the prevailing rate of wage.

(9) Every apprentice, as defined in OAR 839-025-0004(1), must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits as determined pursuant to ORS 279C.800 to 279C.870. Any worker on a public works project who is not an apprentice as defined in OAR 839-025-0004(1), or who is not employed by a registered training agent pursuant to ORS 660.010(10), or who is not working pursuant to the standards of the apprentice's apprenticeship program, must be paid not less than the applicable prevailing rate of wage for

the classification of work actually performed. In addition, if the total number of apprentices employed exceeds the ratio permitted in the applicable standards, all apprentices so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

(10) Every trainee, as defined in OAR 839-025-0004(28), must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits determined pursuant to ORS 279C.800 to 279C.870. Any worker on a public works project who is not a trainee as defined in OAR 839-025-0004(28), or who is not employed by a registered training agent pursuant to ORS 660.010(10), or who is not working pursuant to the standards of the trainee's program, must be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of trainees employed exceeds the ratio permitted in the applicable standards, all trainees so employed must be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.350

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 1-1997(Temp), f. & cert. ef. 4-29-97; BL 4-1997, f. & cert. ef. 8-29-97; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0035, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 18-2009(Temp), f. 8-3-09, cert. ef. 8-5-09 thru 1-31-10; BLI 28-2009, f. 12-1-09, cert. ef. 1-1-10; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11

## 839-025-0060

### Apprentices

(1) Apprentices will be permitted to work upon a public works project at less than the prevailing rate of wage for the work performed when they are employed by a registered training agent pursuant to ORS 660.010(10), and are working pursuant to the standards of the apprentice's apprenticeship program, and are individually registered in a bona fide apprenticeship program registered with:

- (a) The U.S. Department of Labor, Office of Apprenticeship (OA); or
- (b) A State Apprenticeship Agency recognized by the OA; or

(c) If a person is employed in probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the OA or a State apprenticeship Agency to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen in any craft classification must conform to the apprenticeship standards filed with the Oregon Apprenticeship and Training Council for the particular craft or program in which the contractor's or subcontractor's apprentices are registered.

(3) The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage and Hour Division written evidence of the registration of the program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeymen hourly rates) prescribed in that program. The commissioner has prepared a form, **WH-120**, which can be used by contractors or subcontractors in complying with this rule. Use of this form is optional.

(4) Notwithstanding section (1) of this rule, apprentices must be paid the full prevailing rate of wage when the program in which they are registered is located in a state contiguous to Oregon which does not recognize apprentices registered in a program approved by the Oregon State Apprenticeship and Training Council.

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

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.348

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1994, f. & cert. ef. 11-16-94; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0060, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11

## 839-025-0100

### Exemptions

(1) All public works are regulated under ORS 279C.800 to 279C.870 except as follows:

(a) Projects for which the total price does not exceed \$50,000. As used in this section, the price of a project includes, but is not limited to, the value of work performed by every person paid by a contractor or subcontractor in any manner for the person's work on the project, but does not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay. If the price of a project exceeds \$50,000 at any time during the project, the project is not exempt from ORS 279C.800 to 279C.870.

(b) Contracts of a People's Utility District, which are regulated under ORS 261.345.

(c) Projects for which no funds of a public agency are directly or indirectly used.

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(d) Projects:

(A) That are privately owned;

(B) That use funds of a private entity;

(C) In which less than 25 percent of the square footage of a completed project will be occupied or used by a public agency; and

(D) For which less than \$750,000 of funds of a public agency are used.

(E) For purposes of this rule, if none of the square footage of a completed project will be occupied or used by a public agency and no funds of a public agency are used, the provisions of paragraphs (C) and (D) of this subsection will be deemed to have been met.

(e) Projects for residential construction that are privately owned and that predominantly provide affordable housing. As used in this paragraph:

(A) "Affordable housing" means housing that serves occupants whose incomes are no greater than 60 percent of the area median income or, if the occupants are owners, whose incomes are no greater than 80 percent of the area median income.

(B) "Predominantly" means 60 percent or more.

(C) "Privately owned" includes:

(i) Affordable housing provided on real property owned by a public agency if the real property and related structures are leased to a private entity for 50 or more years; and

(ii) Affordable housing owned by a partnership, nonprofit corporation or limited liability company in which a housing authority, as defined in ORS 456.005, is a general partner, director or managing member and the housing authority is not a majority owner in the partnership, nonprofit corporation or limited liability company.

(2) The provisions of ORS 279C.840 and these rules that regulate payment of the prevailing rate of wage do not apply to:

(a) Inmates of the Oregon Department of Corrections assigned to:

(A) A work release program or otherwise working in gainful private employment pursuant to ORS 144.480, relating to prison inmate labor; or

(B) State Parks and Recreation Department projects to improve, maintain and repair buildings and property at state parks and recreation areas pursuant to ORS 390.195(1).

(b) Oregon Youth Conservation Corps members.

(3) A public agency is not subject to ORS 279C.800 to 279C.870 if the public agency only provides funds for a public works project that are not "funds of a public agency" as that phrase is defined in OAR 839-025-0004(9), or, if the public agency will use or occupy less than 25% of the square footage of the completed public works project and less than 25% of combined square footage of the completed project will be used or occupied by public agencies.

(4) Notwithstanding the provisions of sections (1), (2), and (3) of this rule, public works as defined in ORS 279C.800(4)(D) are not exempt from ORS 279C.800 to 279C.870.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 279 & 651.060

Stats. Implemented: ORS 279.357, 390.195(1) & OL Ch. 628 (2001)

Hist.: BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96; BL 1-1998, f. & cert. ef. 1-5-98; BLI 15-2001, f. & cert. ef. 11-14-01; Renumbered from 839-016-0100, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 18-2006, f. 5-12-06, cert. ef. 5-15-06; BLI 20-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 1-27-08; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11

## 839-025-0230

### Special Circumstances

(1) When a public agency enters into an agreement for construction management services or chooses to act as its own general contractor or construction manager in connection with a public works project subject to ORS 279C.800 to 279C.870, the contract price for purposes of determining whether the project is regulated under the law shall be the sum of all contracts associated with the project or, if the actual sums are not known at the time work begins, the contract price shall be the guaranteed maximum amount for the project or the agency's good faith estimate of the contract price of the project if there is no guaranteed maximum amount.

(2) When a public agency contracts with a contractor to act as the general manager of a public works project, the contract for general manager services is a public works contract for purposes of these rules and a fee is required just as it is for any other public works contract, since the contract would not have been entered into but for the public works project.

(3) When a public agency acts as its own general contractor and enters into one or several contracts in connection with a public works project subject to ORS 279C.800 to 279C.870, the public agency is required to pay the fee in connection with each contract awarded to each contractor. The fee is required on all contracts, regardless of the contract price of any individual contract, so long as the combined price of all contracts awarded on the project is \$50,000 or more.

(4) When a project is a public works project pursuant to ORS 279C.800(6)(a)(B) and no public agency awards a contract to a contractor for the project, the public agency or agencies providing public funds for the project shall pay the required fee at the time the public agency or agencies commit(s) to the provision of funds for the project. When the amount of the project is not known by the public agency or agencies providing public funds for the project, the public agency or agencies shall pay the required fee pursuant to the provisions of OAR 839-025-0220.

(5) When a project is a public works project pursuant to ORS 279C.800(6)(a)(C) and no public agency awards a contract to a contractor for the project, the public agency or agencies that will occupy or use the completed project shall pay the required fee when the agency or agencies enter(s) into an agreement to occupy or use the completed project. When the amount of the project is not known by the public agency or agencies that will occupy or use the completed project, the public agency or agencies shall pay the required fee pursuant to the provisions of OAR 839-025-0220.

(6) When a project is a public works project pursuant to ORS 279C.800(6)(a)(D) and no public agency awards a contract to a contractor for the project, the public agency that owns the land, premise(s), structure(s), or building(s) on which the solar radiation device will be constructed or installed shall pay the required fee at the time the public agency enters into an agreement authorizing the construction or installation of the solar radiation device.

(7) When more than one public agency is required to pay a fee pursuant to section (4) or (5) of this rule, the amount of the fee owed by each public agency shall, if not otherwise previously agreed upon by the agencies, be pro-rated proportionately based on the amount of public funds provided or space occupied or used by each agency.

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96; Renumbered from 839-016-0230, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 23-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Amends the prevailing rates of wage for the period beginning January 1, 2011.

**Adm. Order No.:** BLI 24-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2011.

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

## 839-025-0700

### Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2011, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2011, and the effective dates of the applicable special wage determination and rates amendments:

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated January 1, 2011, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00, cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002,



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f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02, cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02, cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04, cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06, cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06, cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07, cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07, cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07, cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09; BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09; BLI 29-2009, f. 12-31-09, cert. ef. 1-1-10; BLI 1-2010, f. 1-8-10, cert. ef. 1-12-10; BLI 2-2010, f. 1-11-10, cert. ef. 1-13-10; BLI 3-2010, f. & cert. ef. 1-19-10; BLI 4-2010, f. & cert. ef. 1-27-10; BLI 13-2010, f. & cert. ef. 4-1-10; BLI 17-2010, f. 6-29-10, cert. ef. 7-1-10; BLI 20-2010, f. & cert. ef. 10-1-10; BLI 24-2010, f. 12-30-10, cert. ef. 1-1-11

## Construction Contractors Board Chapter 812

**Rule Caption:** Housekeeping, home inspector continuing education, implement EEAST program.

**Adm. Order No.:** CCB 17-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Adopted:** 812-002-0677, 812-025-0000, 812-025-0005, 812-025-0010, 812-025-0015, 812-025-0020, 812-025-0025, 812-025-0030, 812-025-0035, 812-025-0040, 812-025-0045

**Rules Amended:** 812-002-0320, 812-008-0074, 812-020-0090

**Subject:** • 812-002-0320 is amended to modify the definition of general contractor so residential general contractors can work on projects involving \$2,500 or less under its general contractor license.

• 812-002-0677 is adopted to create a new definition for specialty contractor. In general, a contractor performing only one or two building trades or crafts. However, if a residential contractor, the specialty contractor may supervise or perform more than two building trades or crafts on projects involving \$2,500 or less.

• 812-002-0760 is amended per Attorney General advice to clarify the definition as subject to general exemption of ORS 701.010.

• 812-002-0780 is amended per Attorney General advice to clarify that the rule does not apply merely based on intent not to build structures, but on actually not building structures.

• 812-008-0074 is amended to clarify the education that qualifies for continuing education for home inspectors.

• 812-020-0090 is amended to clarify that course is completed by key employee, not the commercial contractor.

• Adopt Division 25 rules 812-025-0000, 812-025-0005, 812-025-0010, 812-025-0015, 812-025-0020, 812-025-0025, 812-025-0030, 812-025-0035, 812-025-0040, and 812-025-0045 to implement a certification system for contractors constructing small scale local ener-

gy projects finances by the Energy Efficiency and Sustainable Technology (EEAST) program. (OR Laws 2009, chapter 253, section 48)  
**Rules Coordinator:** Catherine Dixon—(503) 378-4621, ext. 4077

### 812-002-0320

#### General Contractor

“General contractor” means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises, subcontracts to be performed or performs in whole or in part.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

### 812-002-0677

#### Specialty Contractor

“Specialty contractor” means a contractor who performs work on a structure, project, development or improvement and whose business operations:

(1) Require the use of two or fewer unrelated building trades or crafts; or

(2) If a residential contractor, require the use of more than two unrelated building trades or crafts that the specialty contractor supervises, subcontracts to be performed or performs, provided that the sum of all contracts (including labor and materials) on any single property does not exceed \$2,500.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

### 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, 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) 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) Education providers' programs approved by the agency shall be granted retroactive credit for certified home inspectors for two years.

(6) 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 & 701.355

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

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## 812-020-0090

### Key Employee of More than One Commercial Contractor — Continuing Education for Commercial Contractors

If a key employee who completes a continuing education course is employed by more than one commercial contractor when the course is completed, each commercial contractor may include those hours to certify that it satisfied the continuing education requirement.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 812-025-0000

### Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with, and under the authority of, ORS 470.560, 670.310, 701.108, 701.119 and Oregon Laws 2009, chapter 753, section 48.

(2) Purpose. These rules establish a certification system for contractors that participate in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program created by ORS chapter 470 and Oregon Laws 2009.

(3) Scope. These rules:

(a) Establish the requirements for, and the manner of, certifying applicants.

(b) Establish fees.

(c) Prescribe actions that constitute grounds to deny, suspend, or revoke a certification.

(d) Outline requirements for notifying other agencies.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753, Sec. 42-46a, 48 & 49

Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 812-025-0005

### Definitions

The following definitions apply to division 25 of OAR chapter 812.

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

(2) "BPI" means Building Performance Institute.

(3) "Certification" means certification provided to contractors that participate in the construction of small scale local energy projects financed through the EEAST program.

(4) "Disadvantaged business enterprise" means that term as defined in ORS 200.005(1). A "disadvantaged business enterprise" is a small business concern:

(a) That is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or

(b) If a corporation, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals, and of which the management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(5) "EEAST" means energy efficiency and sustainable technology.

(6) "Equal opportunity employer" means an employer that follows the principle of equal opportunity in regards to its hiring and promotion practices. An equal opportunity employer does not discriminate based on race, color, national origin, religion, gender, age, or physical or mental disability.

(7) "Minority or women business enterprise" means that term as defined in ORS 200.005(5). A "minority or women business enterprise" is a small business concern:

(a) That is at least 51% owned by one or more minority individuals or women; or

(b) If a corporation, at least 51 percent of the stock is owned by one or more individuals who are minority individuals or women, and of which the management and daily business operations are controlled by one or more of the minority individuals or women who own it.

(8) "ODOE" means the Oregon Department of Energy.

(9) "Program" or "EEAST program" means the energy efficiency and sustainable technology loan program.

(10) "Project" means a small scale local energy project, as defined by ORS 470.050(27), being funded by the EEAST program.

(11) "REAP" means Residential Energy Analyst Program offered through the Oregon Energy Coordinators Association.

(12) "Small business" means:

(a) An Oregon business that is:

(A) A retail or service business employing 50 or fewer persons at the time the loan is made; or

(B) An industrial or manufacturing business employing 200 or fewer persons at the time the loan is made; or

(b) An Oregon subsidiary of a sole proprietorship, partnership, company, cooperative, corporation or other form of business entity for which the total number of employees for both the subsidiary and the parent sole proprietorship, partnership, company, cooperative, corporation or other form of business entity at the time the loan is made is:

(A) Fifty or fewer persons if the subsidiary is a retail or service business; and

(B) Two hundred or fewer if the subsidiary is an industrial or manufacturing business.

(13) "Small business concern," for purposes of subsections (4) and (7) of this rule, is defined by the United States Small Business Administration (SBA), 13 C.F.R. part 121. A contractor is a "small business concern" if:

(a) It engages in the construction or remodeling of new or existing buildings and receives no more than \$33.5 million in average annual receipts;

(b) It engages in dredging or surface cleanup activities and receives no more than \$20.0 million in average annual receipts;

(c) It primarily engages in the following construction trades and receives no more than \$14.0 million in average annual receipts:

(A) Poured concrete foundation and structure;

(B) Structural steel and precast concrete;

(C) Framing;

(D) Masonry;

(E) Glass and glazing;

(F) Roofing;

(G) Siding;

(H) Foundation, structure and building (other than concrete);

(I) Electrical;

(J) Plumbing;

(K) Heating and air-conditioning;

(L) Building equipment other than (I), (J) or (K);

(M) Drywall and insulation;

(N) Painting and wall covering;

(O) Flooring;

(P) Tile and terrazzo;

(Q) Finish carpentry;

(R) Building finishing other than carpentry;

(S) Site preparation.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753

Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 812-025-0010

### Application and Eligibility to Participate in Construction of Projects Financed by the EEAST Program

An applicant for certification must submit the following:

(1) A completed application on a form provided by the board;

(2) Proof that the applicant is licensed by the board as a residential or commercial contractor;

(3) A copy of a BPI or REAP certificate, referred to in OAR 812-025-0015;

(4) The fee established in OAR 812-025-0040.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753

Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 812-025-0015

### Qualifications for Certification: Skill to Perform Installation

ODOE adopted performance skill standards that the board applies in granting certification. Under the ODOE standards, a contractor is qualified if:

(1) It holds a current and valid BPI accredited contractor.

(2) It is owned by or employs one or more persons who hold a current and valid BPI certificate in at least one of the following disciplines:

(a) Building analyst;

(b) Envelope;

(c) Heating;

(d) Air conditioning/heat pump;

(e) Manufactured housing;

(f) Multifamily.

(3) It is owned by or employs one or more persons who hold a current and valid REAP certificate as one or more of the following:

(a) Energy Analyst-1;

(b) Energy Analyst-2;

(c) Shell Tech-1;

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(d) Diagnostic Tech-1;  
(e) Building Performance Specialist-1.  
Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753  
Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 812-025-0020

### Additional Qualifications for Certification

ODOE adopted standards that the board applies in granting certification. Under the ODOE standards, a contractor is qualified if:

(1) It is not listed by the Commissioner of BOLI as ineligible to receive a contract, or subcontract, for public works;

(2) It is one or more of the following:

- (a) An equal opportunity employer;
- (b) A small business;
- (c) A minority or women business enterprise; or
- (d) A disadvantaged business enterprise.

(3) It has complied with the rules and other requirements of:

- (a) The board;
- (b) The Workers' Compensation Division of the Department of Consumer and Business Services; and
- (c) The Occupational Safety and Health Division of the Department of Consumer and Business Services.

(4) It employs at least 80 percent of employees used for the EEAST program from the local work force, if a sufficient supply of skilled workers is available locally.

(5) It has complied with federal and state wage and hour laws.

(6) It pays wages to employees used for the EEAST program at a rate equal to at least 180 percent of the state minimum wage, unless federal prevailing wages for residential weatherization and energy efficiency retrofit work is higher, in which case the higher wage requirement will apply.

(7) It pays wages to employees used for commercial structures at the prevailing wage rate for each trade or occupation employed.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753  
Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 812-025-0025

### Effective Date of Certification; Certification Term

(1) The effective date of the certification will be the date the applicant meets all board requirements, including but not limited to the receipt of the fee required under OAR 812-025-0040.

(2) All initial and renewal certifications will be non-transferrable and effective for one (1) year from the date of issue.

(3) All certifications will be assigned a unique number.

(4) An applicant for a certification may withdraw the application at any time before issuance of the certification. The applicant must make written request to the board in order to withdraw the certification application.

(5) If the board denies the certification, it shall state, in writing, the reasons for denial.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753  
Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 812-025-0030

### Renewal of Certification

Contractors certified under these rules may renew their certifications by submitting the following:

(1) A properly completed application for certification renewal on a form provided by the board;

(2) Proof that the person is licensed by the board as a residential or commercial contractor;

(3) A copy of a BPI or REAP certificate, referred to in OAR 812-025-0015;

(4) The fee established in OAR 812-025-0040.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753  
Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 812-025-0035

### Denial, Suspension or Revocation of Certification

The board may deny, refuse to renew, suspend or revoke a certification authorized under these rules on the following grounds:

- (1) Obtaining a certification through invalid documentation;
- (2) Permitting the duplication or use of the certification by another;
- (3) Failing to comply with any of the certification standards in OAR 812-025-0015 and 812-025-0020.

(4) If a project is constructed for a commercial structure, failing to pay employees used for the project at the prevailing wage rate, as deter-

mined by the Commissioner of BOLI for each trade or occupation employed.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753  
Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 812-025-0040

### Fees

(1) All initial and renewal certification application fees are non-refundable and non-transferrable.

(2) The fee for initial certification is \$50.

(3) The fee for renewal certification is \$50.

(4) If the board receives payment of fees by check and the check is returned to the agency as an NSF check, the board will charge the applicant \$25 in addition to the required fees.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753  
Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 812-025-0045

### Notification to Other Agencies

(1) The board's website is available to ODOE to determine if the board issued, denied, suspended or revoked a certification.

(2) If the board receives a complaint that a certified contractor failed to comply with a wage and hour standard for a project under the EEAST program, the board will forward the complaint to BOLI.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 470, 670.310, 701.108, 701.119 & 2009 OL Ch. 753  
Hist.: CCB 17-2010, f. 12-22-10, cert. ef. 1-1-11

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**Rule Caption:** Allows Lead-Based Paint Renovation Contractor Surrender License.

**Adm. Order No.:** CCB 18-2010(Temp)

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 12-22-10 thru 6-19-11

**Notice Publication Date:**

**Rules Adopted:** 812-007-0323

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

**Rules Coordinator:** Catherine Dixon—(503) 378-4621, ext. 4077

## 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 & 701.515  
Stats. Implemented: ORS 701.510 & 701.515  
Hist.: CCB 18-2010(Temp), f. & cert. ef. 12-22-10 thru 6-19-11

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## Department of Agriculture Chapter 603

**Rule Caption:** Updates the federal host list and eradication protocols in Oregon's regulations for *Phytophthora ramorum*.

**Adm. Order No.:** DOA 21-2010

**Filed with Sec. of State:** 12-17-2010

**Certified to be Effective:** 12-17-10

**Notice Publication Date:** 6-1-2010

**Rules Amended:** 603-052-1230, 603-052-1250

**Subject:** The USDA Animal and Plant Health Inspection Services updated their quarantine and official protocols for *Phytophthora ramorum*. The Oregon Department of Agriculture is proposing to amend our State regulations to harmonize with the federal changes. In both OAR 603-052-1230 and 603-052-1250, the following will be updated to the most recent federal version: (1) host and associated plant list; (2) confirmed nursery protocol for wholesale and production nurseries; and (3) confirmed nursery protocol for retail



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nurseries. In OAR 603-052-1230, the confirmed residential and landscape protocol will also be updated to the latest federal version.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-052-1230

### Quarantine: *Phytophthora ramorum*

(1) Establishing a quarantine: A quarantine is established against *Phytophthora ramorum*, the cause of sudden oak death and other plant diseases. This quarantine is established under ORS 561.510 and 561.540 to protect Oregon's agricultural industries and natural resources from the artificial spread of *P. ramorum*. This pathogen causes mortality in susceptible oak (*Quercus spp.*), tanoak (*Lithocarpus spp.*), Rhododendron (*Rhododendron spp.*), viburnum (*Viburnum spp.*), evergreen huckleberry (*Vaccinium ovatum*), and other plant species. In other susceptible plants it causes leaf spots, twig dieback and/or stem cankers. Methods for exclusion of commodities potentially infected with this disease and procedures for eradication of incipient infections are prescribed in this quarantine.

(2) Area under quarantine:

(a) The following counties in California: Alameda, Contra Costa, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma;

(b) The following portion of Curry County that lies inside the area south of the northern border of T38S R12W sections 29 and 30, T 39S R13W sections 1, 2, 3, 4, 5, and 6, and T39S R14W sections 1, 2, 3, 4, and 5; then west of the eastern border of T38S R12W sections 29 and 32, T39S R12W sections 5, 8, 17, 20, 29, and 32, T40S R12W sections 5, 8, 17, 20, 29, and 32, and T41S R12W sections 5 and 8; then north of the southern border of T41S R12W Sections 7 and 8, T41S R13W Sections 23 and 24 to the intersection with US Highway 101 and then northeast of US Highway 101 to the intersection with T41S R13W Section 10 and then north of T41S R13W Sections 8, 9, and 10; then east of the western border of the Pacific Coastline;

(c) Any country, state, county, province or area covered by the federal interim rule, 7 CFR 301.92, *Phytophthora ramorum*; quarantine and regulations;

(d) Any property in Oregon where *P. ramorum* is found, including a buffer zone of up to three (3) miles surrounding the infected site during any eradication program.

(3) The following definitions apply to ORS 603-052-1230:

(a) "Hosts and associated plants" means plants on the USDA APHIS List of Regulated Hosts and Plants Associated with *Phytophthora ramorum*, last revised February 22, 2010. (NOTE: This list is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644);

(b) "Nursery stock" is defined in ORS 571.005. Tissue culture plantlets in sealed, sterile containers are exempt from this regulation.

(4) Commodities regulated:

(a) All plants and plant parts of hosts and associated plants: Examples of regulated commodities include all above ground portions of the plants including, but not limited to nursery stock, logs, bark, wood chips, mulch, firewood, sawdust, green waste, other plant products that may contain bark or foliage;

(b) Any other plant found to be naturally infected with *P. ramorum*, any product or article that an official inspector determines to present a risk of spreading *P. ramorum*. All life stages of *P. ramorum*.

(5) Provisions of the quarantine: Regulated commodities originating from the area under quarantine, and any other area found to be infested with *P. ramorum* during the life of this quarantine, are prohibited unless one of the following requirements has been met:

(a) All regulated commodities must be kiln-dried or heat-treated to 60°C (140°F) for one (1) hour measured at the core prior to shipment. Treatments must be officially verified. The official certificate must include the following additional declaration "The (type of covered commodity) from (name of county or other location identifier) has been treated for *Phytophthora ramorum* as required prior to shipment." The length and temperature of the treatment must be recorded on the official certificate;

(b) Nursery stock grown in a quarantined county or area may be eligible for shipment to and within Oregon providing the nursery is part of an official certification program and has been inspected and tested as required by the federal interim rule, 7 CFR 301.92, for *P. ramorum*. The official certificate must include the following additional declaration: "The (covered commodity) from (name of county or other location identifier) has met the *Phytophthora ramorum* quarantine requirements for shipment into and within Oregon.

(NOTE: Recipients of tree and shrub nursery stock imported into the state must notify the ODA no later than two business days after its arrival as required by OAR 603-054-0027.

(c) Soil and potting media from the quarantine area at a known infected site or from within five (5) meters of an infected host plant must be sterilized before shipment. The soil or potting media must reach a minimum temperature of 60°C (140°F) for one (1) hour measured at the center of the mass of soil or potting media. Soil or potting media that has never been associated with the covered commodities is exempt. Treatments must be officially verified. The official certificate must include the following additional declaration "The (soil or potting media) from (name of county or other location identifier) has been treated for *Phytophthora ramorum* as required prior to shipment." The length and temperature of the treatment must be recorded on the official certificate.

(6) Infected properties in Oregon: Confirmation of a *P. ramorum* infection must be made by the ODA or an official cooperator. The disease must be eradicated from the property as quickly as possible in accordance with USDA APHIS's Official Regulatory Protocol for *Phytophthora ramorum* Detections in Residential or Landscaped Commercial Settings, last revised September 1, 2009 or the *Phytophthora ramorum* APHIS Response Protocol for Forest and Wildland Environments Version 1.0, updated November 21, 2008.

(NOTE: These protocols are available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.) Affected property owners will be issued infection location and eradication requirements in the form of an Administrative Directive. For public and private forested lands, the Oregon Departments of Agriculture (ODA) and Forestry (ODF) will work with the landowner to develop an eradication plan that will be based on the best available science. The program may include some or all of the following activities: cutting and piling susceptible trees and shrubs, burning the wood and plant debris when safe to do so, herbicide treatment of stumps and sprouts, fungicide spraying, sampling and monitoring.

(7) Infected nurseries in Oregon: Confirmation of a *P. ramorum* infection must be made by the ODA or an official cooperator. Nurseries are required to eradicate the disease as quickly as possible in accordance with USDA APHIS's Official Regulatory Protocol for Wholesale and Production Nurseries Containing Plants Infected with *Phytophthora ramorum* Version 8.0, updated October 28, 2008, or the Official Regulatory Protocol for Retail Nurseries Containing Plants Infected with *Phytophthora ramorum* Version 1.0, modified August 12, 2009, will be implemented immediately.

(NOTE: These protocols are available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.) The ODA will work with the nursery owner to implement an eradication and monitoring program utilizing protocols prescribed by USDA APHIS.

(8) Special permits: The Department, upon receipt of an application in writing, may issue a special permit allowing movement into this state, or movement within this state, of regulated commodities not otherwise eligible for movement under the provisions of this quarantine order. Movement of such commodities will be subject to any conditions or restrictions stipulated in the permit, and these conditions and restrictions may vary depending upon the intended use of the commodity and the potential risk of escape or spread of *P. ramorum*.

(9) Violation of quarantine: Violation of this quarantine may result in a fine, if convicted, of not less than \$500 no more than \$5,000, as provided by ORS 561.990. In addition, violators will be subject to civil penalties of up to \$10,000 as provided by ORS 561.995. Commodities shipped in violation of this quarantine may be treated, destroyed or returned to their point of origin without expense or indemnity paid by the state.

Stat. Auth.: ORS 561.190 & 561.560

Stats. Implemented: ORS 561.560

Hist.: DOA 1-2001(Temp), f. & cert. ef. 1-5-01 thru 4-4-01, DOA 5-2001, f. & cert. ef. 3-27-01; DOA 1-2005, f. & cert. ef. 1-24-05; DOA 4-2006, f. & cert. ef. 3-10-06; DOA 7-2007, f. & cert. ef. 3-27-07; DOA 5-2008, f. & cert. ef. 1-16-08; DOA 5-2009, f. & cert. ef. 4-9-09; DOA 21-2010, f. & cert. ef. 12-17-10

## 603-052-1250

### *Phytophthora ramorum* Regulated Area for Nursery Stock

(1) A regulated area is established as authorized under ORS 570.305, 571.015 and 571.145, to protect Oregon from introduction of *Phytophthora ramorum* (sudden oak death, ramorum canker and blight). This pathogen causes leaf blight, dieback or death in certain trees and shrubs including tanoak, rhododendron, viburnum and camellia. Susceptible plants include species important to Oregon's native forests, horticultural landscapes and nursery industry.

(2) This regulated area includes the entire state of Oregon.

(3) The following definitions apply to OAR 603-052-1250:

(a) "Hosts and associated plants" means plants on the USDA APHIS's List of Regulated Hosts and Plants Associated with *Phytophthora ramorum*, last revised February 22, 2010. (NOTE: This list is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644;)

(b) "Grower" and "nursery stock" are defined in ORS 571.005;

(c) Tissue culture plantlets in sealed, sterile containers are exempt from this regulation. Also exempt are: acorns and seeds; turf or sod; bulbs;

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tubers, corms or rhizomes (except those species listed as hosts or associated plants); greenhouse grown cactus, succulents and orchids; aquarium grown aquatic plants; and greenhouse, container or field grown palms and cycads.

(4) All growers of host and associated plants in the regulated area shall enter into compliance agreements with the department and/or USDA, APHIS as described in section (6). Before growers can enter into a compliance agreement they must be inspected, tested and certified free of *P. ramorum*, as described in sections (5) or (7).

(5) Growers in the certification program shall be inspected and tested for *P. ramorum* in accordance with federal interim rule, 7 CFR 301.92.

(NOTE: This interim rule is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.) Inspection and sampling procedures will meet or exceed USDA standards for nurseries in regulated and quarantine areas. The department, using federally approved laboratory protocols, will test the samples.

(6) Growers who enter compliance agreements will be required to:

(a) Comply with OAR 603-054-0027 that requires all recipients of shipments of tree and shrub nursery stock imported from out-of-state, to notify the department within two business days of arrival of the shipment;

(b) Purchase hosts and associated hosts only from certified sources when such purchases originate in a Federally quarantined or regulated areas where official *P. ramorum* certification programs acceptable to the department exist;

(c) Have an official inspector inspect and test for *P. ramorum*, hosts and associated hosts purchased from sources in Federally quarantined or regulated areas where no official certification program exists; these plants must be safeguarded, segregated and held off sale until test results are complete;

(d) Maintain records of all incoming and outgoing shipments of hosts and associated hosts for a minimum of 24 months;

(e) Include appropriate Federal or State certification with all host nursery stock and associated plants shipped interstate.

(7) Alternately, such nurseries may be inspected, sampled and tested through an official "State Nursery Stock Cleanliness Program" (SNSCP), which documents inspection of all nursery stock for the presence of *P. ramorum*, at the appropriate time of year. The SNSCP inspection, sampling, and testing program must be approved by USDA, APHIS. Until testing is completed and the nursery is found free of evidence of *P. ramorum* the following plants must be withheld from interstate shipment:

(a) All host nursery stock and associated plants;

(b) All plants within the same genus as any host or associated plant; and

(c) Any plants located within 10 meters of a host or associated plant.

(8) Failure to comply with all articles of a compliance agreement will result in revocation of the compliance agreement and decertification.

(9) Growers of nursery stock that is not on the list of hosts and associated plants must be inspected annually for any evidence of *P. ramorum*. Plants showing symptoms of *P. ramorum* infection upon inspection will be sampled and tested. If symptomatic plants are found upon inspection, the following plants must be withheld from interstate shipment until testing is completed and the nursery is found free of evidence of *P. ramorum*:

(a) All symptomatic plants;

(b) Any plants located in the same lot as the suspect plant; and

(c) Any plants located within 2 meters of this lot of plants.

(10) A list of growers compliant with these rules will be maintained on the department's web site. The department will update the list as necessary to maintain an accurate accounting of growers participating in the program.

(11) If *P. ramorum* is officially confirmed within a nursery, delimitation and eradication procedures as outlined in USDA APHIS's Official Regulatory Protocol for Wholesale and Production Nurseries Containing Plants Infected with *Phytophthora ramorum* Version 8.0, updated October 28, 2008, or the Official Regulatory Protocol for Retail Nurseries Containing Plants Infected with *Phytophthora ramorum* Version 1.0, modified August 12, 2009, will be implemented immediately.

(NOTE: These protocols are available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.) Hosts and associated hosts shall not be moved from the nursery/growing site until all conditions of the protocol are met and the department releases the plants.

(12) Violators of this regulated area are subject to the penalties provided by ORS 570.410 and 570.990 and 570.995, including civil penalties up to \$10,000.

Stat. Auth.: ORS 561.510 & 570.305

Stats. Implemented: ORS 561.190

Hist.: DOA 13-2005, f. & cert. ef. 3-25-05; DOA 4-2006, f. & cert. ef. 3-10-06; DOA 7-2007, f. & cert. ef. 3-27-07; DOA 5-2008, f. & cert. ef. 1-16-08; DOA 5-2009, f. & cert. ef. 4-9-09; DOA 21-2010, f. & cert. ef. 12-17-10

**Rule Caption:** Clarifies general import requirements for livestock.

**Adm. Order No.:** DOA 1-2011

**Filed with Sec. of State:** 1-6-2011

**Certified to be Effective:** 1-6-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 603-011-0255

**Subject:** The Oregon Department of Agriculture, Animal Health Division has the responsibility to protect the livestock of this state from disease. The proposed changes will clarify the general requirements for importing livestock into Oregon. The proposed language does not alter the intent of the rule. The proposed amendments will also bring the rule up to date with other states and other countries.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-011-0255

### Importation of Animals Into Oregon; General Provisions

(1) No livestock that are affected with or that have been known to be exposed to any infectious, contagious, or communicable disease, shall be shipped or in any manner moved or transported into Oregon except as authorized in following sections.

(2) Except as otherwise provided in this rule, all livestock transported or moved in any manner into Oregon are required to obtain an import permit from the Department before entry. The permit number shall be recorded on the grazing permit or Certificate of Veterinary Inspection document, and be in the possession of the driver of the vehicle or person in charge of the animals.

(3)(a) At the time an import permit is requested, the Department may require that a Certificate of Veterinary Inspection or Grazing Permit be obtained at the point of origin and shall accompany the applicable livestock into Oregon.

(b) The State Veterinarian may allow any livestock import requirements to be completed at the first point of destination within this state, on a case-by case basis, if it is determined by the State Veterinarian, that such action will not create a disease hazard to the livestock of this state;

(4) No livestock may be imported into Oregon that are specifically prohibited from interstate movement by the U.S. Department of Agriculture.

(5) The following are exempted from the requirement to obtain an Oregon import permit:

(a) Animals being moved or transported directly (without diversion) to a licensed Oregon slaughtering establishment. Animals consigned for slaughter and received in such slaughtering establishments may not be released from such establishments except by special permission from the State Veterinarian;

(b) Livestock originating in other states and shipped to a state-federal approved livestock auction market in Oregon. Such livestock shall be required to comply with all other applicable administrative rules for import into Oregon;

(c) Livestock being transported through the state without interruption, other than stops for feed, water and rest;

(d) Any resident animal leaving and returning to Oregon within 30 days; and

(e) Dogs, cats, reptiles, and non-poultry birds traveling interstate.

(6) Requirements for the exhibition of livestock shall comply with the directives of the Department for that specific exhibit.

(7)(a) Canadian cattle imported into Oregon must be born after 1999, individually identified by an official Canadian ear tag, applied before the animal's arrival at the port of entry into the United States, that is traceable to the premises of Canadian origin of the animal and be listed on the Certificate of Veterinary Inspection.

(b) Canadian cattle imported into Oregon must have a hot iron brand of CAN properly applied and easily visible on the live animal and on the carcass before skinning. The CAN brand must be not less than 2 inches nor more than 4 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first coccygeal vertebrae).

(8) Livestock being transported or moved, in any manner, into Oregon without an import permit and a Certificate of Veterinary Inspection or grazing permit, when required, shall be held in quarantine at the owner's risk and expense until released by the Department. This section shall not be construed as a waiver of

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enforcing the provisions of ORS 596.990 for violation of regulations relating to importation of livestock.

Stat. Auth.: ORS 561 & 596  
Stats. Implemented: ORS 596.341  
Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 9-1977, f. & ef. 4-6-77; AD 7-1981, f. & ef. 5-13-81; AD 3-1984, f. & ef. 1-20-84; DOA 1-2000, f. & cert. ef. 1-4-00; DOA 18-2007(Temp), f. 11-9-07, cert. ef. 11-15-07 thru 5-10-08; Administrative correction 5-20-08; DOA 17-2008, f. & cert. ef. 7-15-08; DOA 1-2011, f. & cert. ef. 1-6-11

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**Rule Caption:** Clarify import requirements for sheep and goats.

**Adm. Order No.:** DOA 2-2011

**Filed with Sec. of State:** 1-6-2011

**Certified to be Effective:** 1-6-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 603-011-0340

**Rules Repealed:** 603-011-0365

**Subject:** The Oregon Department of Agriculture, Animal Health Division has the responsibility to protect the livestock of this state from disease. The proposed changes combine two rules and clarify the requirements for importing sheep and goats into Oregon. The proposed language does not alter the intent of the rule. The proposed amendments will also bring the rule up to date with other federal law and other states and countries.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-011-0340

### Importation of Sheep and Goats

In addition to the requirements of OAR 603-011-0255, relating to the importation of animals into Oregon, a Certificate of Veterinary Inspection shall be required certifying the animals being imported are free from clinical signs of disease and have no known exposure to scrapie.

(1) All sheep and goats being imported into Oregon shall be individually identified as specified by OAR 603-011-0388.

(2) Exceptions to the requirement for a Certificate of Veterinary Inspection or for any tests required due to disease conditions in state of origin may be made under agreements between the Oregon State Veterinarian and Chief Animal Health Official of reciprocating states.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412  
Stats. Implemented: ORS 596.341  
Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 3-1984, f. & ef. 1-20-84; AD 5-1993(Temp), f. & cert. ef. 5-26-93; AD 13-1993, f. & cert. ef. 10-6-93; DOA 2-2011, f. & cert. ef. 1-6-11

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**Rule Caption:** Clarify statements describing the intent of the rules.

**Adm. Order No.:** DOA 3-2011

**Filed with Sec. of State:** 1-6-2011

**Certified to be Effective:** 1-6-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 603-011-0263, 603-011-0264

**Subject:** The proposed changes will help clarify the subject of the rule. For example, OAR 603-011-0263 describes the requirements for cattle to be allowed to move across the state border, graze for a season and return to Oregon. Under the general heading of “Cattle Grazing Permits”, the description for this rule is “Importation of cattle: Out-of-state grazing”. The proposed change is, “Grazing Permit for Oregon Cattle”. The remaining proposed changes follow a similar logic.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-011-0263

### Grazing Permit for Oregon Cattle

(1) For the purpose of this rule and OAR 603-011-0264, “Grazing Permit” means a document issued by the Department at or before the time an identified person moves a specific herd of cattle from this state to a specific location in another state for grazing as a usual part of the person’s ranching operations, which authorizes the re-entry of the same cattle herd to the place of origin in this state within a specified period of time without the need for an additional permit at the time of the re-entry.

(2) In order to qualify for the issuance of a grazing permit, the following conditions shall be met:

(a) The cattle shall be a part of an established breeding herd in this state which had been assembled (other than births in the herd) more than four months prior to the submission of an application for a grazing permit;

(b) The cattle shall have been officially vaccinated against brucellosis if this would be required for entry of the cattle into this state, or officially tested negative for brucellosis, within 30 days prior to the submission of an application for a grazing permit, and if the alternative is testing, shall not have been exposed thereafter to any other cattle known to be infected with brucellosis; and

(c) The out-of-state location for the grazing or feeding of the cattle shall be owned or leased by the owner of the cattle herd, and shall be so situated as to prevent the herd from commingling with other cattle in the area.

(3) An application for a grazing permit shall be on a form prescribed by the Department, shall be submitted to the Department at least 14 days prior to the intended movement of the cattle herd, and shall include:

(a) The name and address of the applicant, and the Oregon location of the cattle herd;

(b) The number, gender, breed, approximate average age, and brand identification (if any) of the cattle in the herd;

(c) The specific location and state to which the cattle herd is to be moved, the description of conditions that are intended to prevent commingling of the herd with other cattle, the intended length of time before the herd would be returned to this state; and intended date of movement to the out-of-state location;

(d) The evidence of the official vaccination against brucellosis, or of the official test(s) negative for brucellosis of the cattle herd, including the date(s) thereof; and

(e) The declarations, upon which the department is to rely, stating when the cattle herd had been finally assembled, and stating the reasons the intended movement of the cattle herd should be considered a usual part of the applicant’s ranching operations.

(4) A grazing permit shall expire six months after its date of issuance. Prior to the expiration date, a grazing permit may be revoked or suspended by the Department if it determines that:

(a) Any of the evidence or declarations in the application for a grazing permit has been determined to be false or misleading;

(b) Any of the circumstances or conditions specified in section (2) of this rule has been determined to be non-existent or falsely stated; or

(c) After the cattle herd has been moved to the authorized out-of-state location, the cattle have thereafter been moved to a location other than authorized in the permit, or cattle have been added to or inserted as replacement in the herd, or the cattle in the herd have been allowed to commingle with other cattle.

(5) The grazing permit may be revoked or suspended by personally serving, or mailing by certified mail to, the permittee a written determination and order, which order shall be effective immediately. If the grazing permit is revoked or suspended while the cattle herd is out of state, the cattle shall not be allowed re-entry into this state unless the person having custody of the cattle complies with all of the regular requirements for the importation of cattle into this state.

Stat. Auth.: ORS 561 & 596  
Stats. Implemented: ORS 596.341  
Hist.: AD 6-1987, f. & ef. 5-5-87; DOA 3-2011, f. & cert. ef. 1-6-11

## 603-011-0264

### Grazing Permit for Cattle From Other States

(1) In lieu of meeting all of the requirements for the issuance of a permit by this Department for the importation of cattle into this state, a person desiring to transport cattle into this state for the purpose of grazing for a limited time period may apply to the Department for recognition of a grazing permit issued to the person by the state in which the cattle are situated. If the Department determines recognition is appropriate, it shall issue a permit for the importation of the cattle into this state.

(2) In order to qualify for recognition of an out-of-state grazing permit, the following conditions shall be met:

(a) The grazing permit must be based upon the same or equivalent conditions and requirements for the issuance of an Oregon grazing permit, as set forth in OAR 603-011-0263;

(b) The grazing permit must have been issued to the person requesting its recognition and apply to the cattle desired to be transported into this state; and

(c) A written agreement must be in effect between this Department and the comparable agency of the state issuing the grazing permit, wherein reciprocal recognition is given to the grazing permits of the respective states and their administrative requirements and conditions for the issuance of the permits.

(3) An application for recognition of an out-of-state grazing permit shall be on a form prescribed by the Department, shall be submitted to the Department at least 14 days prior to the intended movement of the cattle



# ADMINISTRATIVE RULES

herd, and shall be accompanied by a certified or duplicate-original copy of the out-of-state grazing permit issued to the applicant.

Stat. Auth.: ORS 561 & 596  
Stats. Implemented: ORS 596.341  
Hist.: AD 6-1987, f. & ef. 5-5-87; DOA 3-2011, f. & cert. ef. 1-6-11

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**Rule Caption:** Amends and updates rule to use modern terms.

**Adm. Order No.:** DOA 4-2011

**Filed with Sec. of State:** 1-7-2011

**Certified to be Effective:** 1-7-11

**Notice Publication Date:** 10-1-2010

**Rules Amended:** 603-011-0250

**Subject:** The Oregon Department of Agriculture, Animal Health Division has the responsibility to protect the livestock of this state from disease. The proposed changes will employ modern terms and correctly describe a transporting document as a Certificate of Veterinary Inspection and require specific location information for imported livestock. The proposed amendments will bring the rule up to date with other states and other countries.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-011-0250

### Definitions

As used in ORS 596 and OAR 603-011-0250 to 603-011-0725 the following definitions apply:

(1) "Approved Veterinarian" means a licensed graduate veterinarian accredited by the federal authorities in the state of origin or an authorized veterinarian of the U.S. Government or of the state government of state of origin.

(2) "Dairy Cattle" means cattle of the recognized dairy breeds or crosses of such breeds.

(3) "Beef Cattle" means cattle of the recognized beef breeds or crosses of such breeds and also cattle of mixed dairy and beef breeds.

(4) "Livestock" as used in ORS 596.010, except as provided in ORS 596.615 to 596.681 includes, but is not limited to, horses, mules, jennies, jackasses, cattle, sheep, dogs, hogs, goats, domesticated fowl, psittacines, rartites, domesticated fur-bearing animals, bison, cats, poultry, and any other vertebrate in captivity. Fish are not "livestock".

(5) "Livestock Auction Market" means an Oregon licensed livestock auction market or stockyard where animal health inspection is continually maintained by the Department and Oregon import requirements for imported livestock may be completed before the animals leave the market.

(6) "Official Test" means any test to determine qualitatively or quantitatively the presence or absence of disease and performed by a laboratory, or by specific personnel, approved by the Chief Livestock Health Official of the state of origin.

(7) "Certificate of Veterinary Inspection" means a legible record complying with the animal health requirements of the State of Oregon, from the state of origin, approved and issued by the Livestock Health Official of that state, or an equivalent form from the U.S. Government, and issued by an approved veterinarian. Such certificates shall be void 30 days after the date of issuance. The form shall contain, in addition to such information as may be hereinafter required for a particular species of livestock the following information:

(a) Complete name and address of consignor and consignee;  
(b) Physical address of both the origin and destination location of the livestock in of the shipment;

(c) The date of issuance;

(d) A description or identification of the livestock to be shipped, including the age, sex, breed, brands, or marks, tags, or official identification devices;

(e) Visible signs of clinical disease in the livestock being shipped;

(f) Results and dates of required tests and vaccinations.

(8) "Import Permit" means an authorization in writing, or by facsimile or telephone from the Department, permitting the doing of the acts recited therein. All import permits shall be void 15 days after date of issuance, unless specified otherwise at time of issuance. Request for an import permit shall set forth the following information:

(a) Number and kind of livestock;

(b) Complete name and address of consignor, and physical address of origin of shipment, if different from consignor address;

(c) Proposed date of shipment;

(d) Complete name and address of consignee and physical address of destination location of livestock in the shipment;

(e) Intended purpose of shipment.

(9) "Person" means partnerships, individuals, corporations, or associations.

(10) "Poultry" includes, but is not limited to, chickens, turkeys, waterfowl, pheasants, quail, partridges, grouse, guineas, and peafowl of all ages and their hatching eggs. Other avian species includes all birds not defined as poultry whether to be held in captivity or released from captivity.

(11) "Quarantined Herd or Area" means a herd or area, county, or state quarantined by either the U.S. Department of Agriculture or by a state for any reason.

(12) "Slaughtering Establishment" means an establishment as defined in OAR 603-012-0001.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1074(37-74), f. 9-20-74, ef. 10-11-74; AD 1-1981, f. & ef. 1-9-81; AD 3-1984, f. & ef. 1-20-84; DOA 2-2002(Temp), f. & cert. ef. 1-18-02 thru 7-4-02; DOA 15-2002, f. & cert. ef. 6-13-02; DOA 4-2011, f. & cert. ef. 1-7-11

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**Rule Caption:** Clarifies import requirements for livestock concerning vesicular stomatitis.

**Adm. Order No.:** DOA 5-2011

**Filed with Sec. of State:** 1-7-2011

**Certified to be Effective:** 1-7-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 603-011-0256

**Subject:** The Oregon Department of Agriculture, Animal Health Division has the responsibility to protect the livestock of this state from disease. The proposed changes will clarify the requirements for importing livestock into Oregon from vesicular stomatitis areas. The proposed language does not alter the intent of the rule. The proposed amendments will also bring the rule up to date with other states and other countries.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-011-0256

### Importation of Animals; Preventing Vesicular Stomatitis

(1) In addition to the requirements of OAR 603-011-0255 and all other import requirements, animals listed in section (2) of this rule which are shipped from any state or area with confirmed cases of vesicular stomatitis shall not be imported into Oregon unless:

(a) An import permit is obtained from the Department before movement, including animals moving to an approved livestock market in Oregon; and

(b) The animals show no clinical signs of vesicular stomatitis on the day of shipment; and

(c) The animals have not originated from a premises or area under quarantine for vesicular stomatitis; and

(d) A Certificate of Veterinary Inspection issued within 24 hours of movement shall accompany the animals, which states: The animals represented on this Certificate of Veterinary Inspection have not originated from a premises or area under quarantine for vesicular stomatitis.

(2) The following animals are subject to the requirements of section (1) of this rule:

(a) Horses;

(b) Cattle;

(c) Bison;

(d) Sheep;

(e) Goats;

(f) Swine; and

(g) Other susceptible animals associated with the animals listed above.

(3) The Department may require serological testing for vesicular stomatitis of any animal imported into the state. If an animal shows a positive response, the Department may deny entry into Oregon.

(4) The Department may require that any animals originating in or traveling through states where vesicular stomatitis has been confirmed be quarantined on the premises of destination for a minimum of 21 days. The Department may also require that a representative of the Department inspect quarantined animals before release of quarantine.

(5) The Department may deny entry into the state of any animal that has been vaccinated with vesicular stomatitis vaccine.

(6) The Department may require the inspection of individual animals at any gathering, including fairs, shows, rodeos, sales, auctions, and similar events, if the Department has reason to believe the animals have been exposed to vesicular stomatitis.

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(7) If the Department has reason to believe that animals have been exposed to vesicular stomatitis, the Department may require inspection of the animals, the documents associated with the animals and the vehicles used to haul the animals. However, the Department may only inspect that portion of the vehicle associated with the animals.

(8) The Department may remove these requirements from any state, after the last confirmed case in that state is released from quarantine and when the decision is supported by consultation with the Oregon United States Department of Agriculture Area Veterinarian in Charge and epidemiological investigation.

Stat. Auth.: ORS 183.335(5), 561.190, 561.192, 561.605, 596.020(1)(a)(b), 596.341, 596.351, 596.392 & 604.046(4)  
Stats. Implemented: ORS 596.020, 596.341, 596.351, 596.392 & 604.046(4)  
Hist.: AD 14-1995(Temp), f. & cert. ef. 7-27-95; AD 17-1995, f. & cert. ef. 12-14-95; DOA 5-2011, f. & cert. ef. 1-7-11

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**Rule Caption:** Clarify import requirements for livestock concerning scabies.

**Adm. Order No.:** DOA 6-2011

**Filed with Sec. of State:** 1-7-2011

**Certified to be Effective:** 1-7-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 603-011-0281

**Subject:** The Oregon Department of Agriculture, Animal Health Division has the responsibility to protect the livestock of this state from disease. The proposed changes will clarify the general requirements for importing livestock into Oregon from scabies areas. The proposed language does not alter the intent of the rule. The proposed amendments will also bring the rule up to date with other states and other countries.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-011-0281

### Importation of Cattle; Movement From A Scabies Infection Area

(1) “Scabies” means a contagious skin disease of cattle caused by mites (Acaridae) of the genera Psoroptes, Chorioptes, or Sarcoptes.

(2) “Ivermectin” means a proprietary product authorized and approved by the U.S. Department of Agriculture for the treatment, control or eradication of scabies in cattle.

(3) No person shall ship, trail, drive or otherwise move into Oregon any cattle which have been exposed to scabies infection or are infected with scabies or originate in a scabies quarantined area unless such movement is in compliance with the provisions of the Code of Federal Regulations (9 CFR 73) and the applicable provisions of OAR 603-011-0250 and 603-011-0255.

(4) Cattle or bison moving to Oregon from a scab infected area or state must be treated with Ivermectin or other effective treatment as approved in the Code of Federal Regulations within 10 days before entry;

(5) Treatment of cattle for scabies infection shall be under the direction of a representative of the U.S. Department of Agriculture or the origin state Department of Agriculture.

Stat. Auth.: ORS 561 & 596  
Stats. Implemented: ORS 596.341  
Hist.: AD 6-1985, f. & ef. 7-17-85; DOA 6-2011, f. & cert. ef. 1-7-11

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

**Rule Caption:** Temporarily removing elevators from service in unoccupied buildings.

**Adm. Order No.:** BCD 18-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Adopted:** 918-400-0755

**Subject:** This rule establishes procedures for building owners to temporarily remove unused elevators from service in an unoccupied building and return those elevators to service once a building is reoccupied. This rule will give building owners some relief from the inspection, maintenance, and permit requirements of these unused elevators and create procedures for returning elevators to service once a building is reoccupied.

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

## 918-400-0755

### Temporarily Removing Unused Elevators from Service in an Unoccupied Building

(1) Despite OAR 918-400-0740 and except as provided in OAR 918-400-0275, a person wishing to temporarily remove an unused elevator installed in an entirely unoccupied building from service must:

(a) At least 30 days prior to removing the elevator from service, notify the division in writing of the date the elevator will be removed from service;

(b) Within 30 days of removing an elevator from service, provide the division with written confirmation that:

(A) The building in which the elevator is installed is entirely unoccupied;

(B) The elevator removed from service will not be used for any purpose; and

(C) At least one elevator in full compliance with this chapter and the Oregon Elevator Specialty Code, and that serves all floors of the unoccupied building remains in service for any elevator transportation in the unoccupied building.

(2) After receiving notice under section (1)(b) that the elevator has been removed from service, the division will lock-out and red tag the elevator.

(3) Every 12 months from the date the elevator is removed from service, the responsible party must notify the division in writing that the requirements of section (1)(b) continue to be met.

(4) Despite OAR 918-400-0750, when an elevator temporarily removed from service is to be returned to operating service:

(a) At least 30 days prior to returning the elevator to service, the responsible party must notify the division in writing of the date the elevator will be returned to service;

(b) At least 30 days prior to returning the elevator to service, the responsible party must obtain an elevator operating permit from the division;

(c) With permission from the division, an elevator contractor may operate the elevator and make necessary repairs and adjustments to make the elevator operational.

(d) All testing required to place the elevator back in service shall be witnessed by a division inspector prior to the elevator being returned to service; and

(e) The elevator must not be placed back into service before an inspection by the division according to the code under which the unit was installed is performed and an operating permit under OAR 918-400-0660 is issued.

Stat. Auth.: ORS 460.085  
Stats. Implemented: ORS 460.085  
Hist.: BCD 18-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Adoption of radon gas mitigation standards amending the 2008 ORSC and 2010 OSSC.

**Adm. Order No.:** BCD 19-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 918-460-0015, 918-480-0010

**Subject:** These rules implement Senate Bill 1025 approved by the 2010 Legislature. The bill requires the Residential and Manufactured Structures Board to adopt radon mitigation standards for most types of new residential buildings and requires the Building Codes Structures Board to adopt radon mitigation standards for certain types of new residential buildings and new public buildings. Radon mitigation standards adopted by these rules amend both the Oregon Residential Specialty Code (ORSC) and the Oregon Structural Specialty Code (OSSC). These requirements are applicable in Baker, Clackamas, Hood River, Multnomah, Polk, Washington and Yamhill Counties. Additionally, radon mitigation standards applicable to new residential buildings become effective April 1, 2011 while radon mitigation standards applicable to new public buildings become effective April 1, 2013.

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

## 918-460-0015

### Amendments to the Oregon Structural Specialty Code

(1) The 2010 Oregon Structural Specialty Code is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted

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for inclusion into the **2010 Oregon Structural Specialty Code** are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

(2) Effective January 1, 2011 the **2010 Oregon Structural Specialty Code** is amended by adding Section 1811 Radon Control Methods Public Buildings and Section 1812 Radon Control Methods R-2 and R-3 Occupancies.

(a) Radon mitigation provisions in Section 1811 applicable to new public buildings are adopted January 1, 2011 but do not become enforceable until April 1, 2013 as authorized by Chapter 83, 2010 Laws (Senate Bill 1025).

(b) Radon mitigation provisions in Section 1812 applicable to residential buildings identified as Group R-2 or R-3 are adopted January 1, 2011 but do not become enforceable until April 1, 2011 as authorized by Chapter 83, 2010 Laws (Senate Bill 1025).

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110, 455.112, & 455.610  
Stats. Implemented: ORS 447.247, 455.110 & 455.112  
Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000 f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp) f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004, f. & cert. ef. 4-1-04; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 21-2004, f. & cert. ef. 10-1-04; BCD 9-2005(Temp), f. & cert. ef. 4-7-05 thru 9-30-05; BCD 14-2005, f. & cert. ef. 7-5-05; BCD 18-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 22-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 23-2005, f. 9-29-05, cert. ef. 10-1-05; BCD 1-2006, f. & cert. ef. 2-1-06; BCD 9-2006, f. 6-30-2006, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 9-2008(Temp), f. & cert. ef. 6-25-08 thru 12-22-08; BCD 20-2008, f. 9-30-08, cert. ef. 10-1-08; BCD 4-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 19-2010, f. 12-30-10, cert. ef. 1-1-11

## 918-480-0010

### Amendments to the Oregon Residential Specialty Code

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

(2) Effective April 1, 2008:

(a) The 2006 Edition of the Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials and amended by the division, is adopted to provide the plumbing provisions of the **Oregon Residential Specialty Code**; and

(b) The 2008 Edition of the NFPA 70, National Electrical Code as amended by the division is adopted to provide the electrical provisions of the **Oregon Residential Specialty Code**. See OAR chapter 918, division 305 for Oregon amendments to NFPA 70, National Electrical Code.

(3) During the phase-in period established in OAR 918-480-0005(3), plans designed to the **2005 Oregon Residential Specialty Code** must use the plumbing and electrical provisions included in that 2005 code. Plans that are designed to the **2008 Oregon Residential Specialty Code** must use the plumbing and electrical provisions adopted in this rule.

(4) Effective October 1, 2008, the following sections of the 2008 Oregon Residential Specialty Code are amended:

(a) Section R 109.1.4.1 Moisture content.

(b) Section R318.2 Moisture content.

(5) Effective February 1, 2009, following sections of the **2008 Oregon Residential Specialty Code** are amended:

(a) Section R602.10.9 Interior braced wall support.

(b) Section R613.2 Window sills is added

(c) Section R.613.2.1 Operation for emergency escape is added

(d) Chapter 43 Referenced Standards.

(6) Effective October 1, 2009, the following sections of the **2008 Oregon Residential Specialty Code** are amended:

(a) Section AG106 Entrapment Protection for Swimming Pool and Spa Suction Outlets is added.

(b) Section AG107 Abbreviations.

(c) Section AG108 Standards.

(7)(a) Effective January 1, 2010, the following sections of the **2008 Oregon Residential Specialty Code** are amended:

(A) Section R703.1 General

(B) Section R703.1.1 Exterior Wall Envelope

(b) Changes to the **2008 Oregon Residential Specialty Code** made by subsection (a) of this section are subject to a grace period ending March

31, 2010. During the grace period, the building official must approve installations that meet either the standard adopted under Section R703.1 prior to this amendment or the standard established by this amendment.

(8) Effective January 1, 2011, the **2008 Oregon Residential Specialty Code** is amended by adopting Appendix F Radon Control Methods. This provision is adopted January 1, 2011 but do not become enforceable until April 1, 2011 as authorized by Chapter 83, 2010 Laws (Senate Bill 1025).

(9) Effective January 1, 2011, Appendix N (**2010 Oregon Structural Specialty Code**) is amended by adding Section AN115 Radon Mitigation. This provision is adopted January 1, 2011 but does not become enforceable until April 1, 2011 as authorized by Chapter 83, 2010 Laws (Senate Bill 1025).

**NOTE:** The amendments are published in their entirety in Table 2-R beginning on page 9.

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

Stat. Auth.: ORS 455.020, 455.110, 455.525 & 455.610

Stats. Implemented: ORS 455.610

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCA 29-1993, f. 11-24-93, cert. ef. 12-1-93; BCD 6-1995, f. 3-31-95, cert. ef. 4-1-95; BCD 3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 22-1996(Temp), f. 10-1-96, cert. ef. 10-4-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; Administrative Reformatting 1-19-98; BCD 3-1998, f. 1-29-98, cert. ef. 4-1-98; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 3-2000, f. 1-14-00 cert. ef. 4-1-00; BCD 19-2000(Temp), f. & cert. ef. 8-15-00 thru 2-10-01; BCD 32-2000, f. 12-27-00, cert. ef. 1-1-01; BCD 3-2001, f. 2-9-01, cert. ef. 3-1-01; BCD 2-2002, f. 3-5-02, cert. ef. 4-1-02; BCD 22-2002(Temp), f. 9-13-02 cert. ef. 10-1-02 thru 3-29-03; BCD 30-2002, f. 12-6-02, cert. ef. 1-1-03; BCD 1-2003(Temp), f. & cert. ef. 1-10-03 thru 3-31-03; BCD 33-2002, f. 12-20-02 cert. ef. 4-1-03; BCD 15-2004, f. 9-10-04, cert. ef. 10-1-04; BCD 5-2005, f. & cert. ef. 3-28-05; BCD 9-2006, f. 6-30-06, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 5-2008, f. 2-22-08, cert. ef. 4-1-08; BCD 13-2008(Temp), f. & cert. ef. 7-3-08 thru 12-30-08; BCD 21-2008, f. 9-30-08, cert. ef. 10-1-08; BCD 24-2008(Temp), f. & cert. ef. 10-6-08 thru 4-1-09; BCD 1-2009, f. 1-30-09, cert. ef. 2-1-09; BCD 8-2009, f. 9-30-09, cert. ef. 10-1-09; BCD 5-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 19-2010, f. 12-30-10, cert. ef. 1-1-11

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

**Rule Caption:** Permanently implements the registration requirements for appraisal management companies doing business in Oregon.

**Adm. Order No.:** FCS 13-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 441-674-0005, 441-674-0100, 441-674-0120, 441-674-0130, 441-674-0140, 441-674-0210, 441-674-0220, 441-674-0230, 441-674-0240, 441-674-0250, 441-674-0310, 441-674-0910, 441-674-0915, 441-674-0920

**Rules Repealed:** 441-674-0005(T), 441-674-0100(T), 441-674-0120(T), 441-674-0130(T), 441-674-0140(T), 441-674-0210(T), 441-674-0220(T), 441-674-0230(T), 441-674-0240(T), 441-674-0250(T), 441-674-0310(T), 441-674-0910(T), 441-674-0915(T), 441-674-0920(T)

**Subject:** These proposed permanent rules implement the registration requirements of 2010 House Bill 3624, which regulates the activities of appraisal management companies. HB 3624, passed and signed into law on March 23, 2010, requires appraisal management companies doing business in Oregon to register with the Department of Consumer and Business Services (DCBS) by January 1, 2011. These permanent rules clarify registration requirements, establish criteria for verifying the competency of appraisers, adopt standards for dispute resolution processes that allow persons with an interest in a real estate transaction to dispute an appraisal, and set fees. These permanent rules also repeal temporary rules adopted temporary rules on September 1, 2010 in order to meet the time constraints of the law as well as to give appraisal management companies time to comply with the act prior to January 1, 2011.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

### 441-674-0005

#### Definitions

In addition to the definitions in 2010 Or Laws ch 87, § 1, the following definitions apply unless the context clearly requires otherwise:

(1) "Appraisal report" has the same meaning as the term is defined in OAR 161-002-0000.



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(2) "Assignment" means:

(a) An agreement between an appraiser and a client to perform a valuation service; and

(b) The valuation service that is provided as a consequence of such an agreement.

(3) "Board" means the Appraiser Certification and Licensure Board established under ORS 674.305.

(4) "Competency" or "competent" refers to the Competency Rule as contained in the Uniform Standards of Professional Appraisal Practice, 2010-2011 Edition, approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, dated April 27, 1987, as amended on January 1, 2010 and adopted by the board by reference under OAR 161-005-0060.

(5) "Director" means the Director of the Department of Consumer and Business Services.

(6) "Individual" means a natural person.

(7)(a) A "person with an interest in a real estate transaction" includes, but is not limited to, a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or a consumer.

(b) A "person with an interest in a real estate transaction" does not include an appraiser.

(8) "Quality control examination" means the examination of an appraisal report for compliance and completeness, including examination for grammatical or typographical errors.

(9) "Real property" has the same meaning as the term is defined in OAR 161-002-0020(3).

(10)(a) "Reviews real estate appraisal activity" means, for purposes of section 2, chapter 87, 2010 Or Laws, the act or process of developing or communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, appraisal review, or appraisal consulting assignment.

(b) "Reviews real estate appraisal activity" does not include a quality control examination.

(11) "System" means an organized or established procedure or method.

Stat. Auth.: 2010 OL Ch. 87, § 1

Stat. Implemented: 2010 OL Ch. 87, § 1-2 & 7

Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0100

### Registration Requirements

(1) A business entity applying for registration as an appraisal management company shall submit to the director all of the following information:

(a) A completed application form listing the information required by 2010 Or Laws ch 87, § 2;

(b) The names, contact information, and percentage of ownership of every person considered a subject individual under OAR 441-674-0210;

(c) For the persons named in subsection (b) of this section, the numbers of the licenses, certificates or registrations issued by any state to do business as an appraiser or an appraisal management company;

(d) Disclosures of any administrative action taken by any state to refuse, deny, cancel or revoke a license, certificate or registration as an appraiser or as an appraisal management company, if any; and

(e) If the business entity reviews real estate appraisal activity, the review appraiser's name and license or certification number issued by the board, as appropriate.

(2) A business entity applying for registration as an appraisal management company shall attach to the application for registration as an appraisal management company the following:

(a) Applicable fees established in OAR 441-674-0910;

(b) A copy of the surety bond required by 2010 Or Laws ch 87, § 3 in a form and format approved by the director;

(c)(A) A signed statement on a form approved by the director that the business entity established a system to verify the competency of appraisers on the business entity's panel meeting the minimum requirements in OAR 441-674-0120; and

(B) A short description of the business entity's system to verify competency meeting the minimum requirements established in OAR 441-674-0120;

(d)(A) A signed statement on a form approved by the director that the business entity established a dispute resolution process meeting the minimum requirements established in OAR 441-674-0130; and

(B) A copy of the clause in the business entity's contract with an independent contractor appraiser governing the business entity's dispute resolution process under OAR 441-674-0130;

(e) A signed statement on a form approved by the director that the business entity maintains and retains a detailed record of each appraisal management services request the entity receives and the appraiser who performs the real estate appraisal activity contained in the request for:

(A) Not less than five years after the date of completion of the appraisal to which the record pertains; or

(B) For a period of not less than two years after final disposition of a judicial proceeding in which testimony relating to the records was given, whichever period expires later; and

(f) Sealed envelopes containing fingerprint cards for a "subject individual" under OAR 441-674-0210 containing information specified in OAR 441-674-0230.

Stat. Auth.: 2010 OL Ch. 87, § 2

Stat. Implemented: 2010 OL Ch. 87, § 2

Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0120

### System to Verify Competency

(1) A system to verify the competency of an appraiser under 2010 Or Laws ch 87, § 2 shall meet the following minimum requirements:

(a) An appraisal management company shall require that each independent contractor appraiser furnish the number of the appraiser's license or certification issued by the board.

(b) An appraisal management company shall require each independent contractor appraiser represent in writing the appraiser's qualifications and competency, which may include but not be limited to:

(A) The metropolitan statistical areas, metropolitan divisions, areas outside of a metropolitan statistical area, counties, postal codes or other geographic information signifying where the appraiser represents she or he is competent to appraise;

(B) The types of real property the appraiser represents she or he is competent to appraise; and

(C) Other information relevant to the business activities of the business entity and necessary to demonstrate the competency of an appraiser.

(c) An appraisal management company shall include the following information in an assignment to an independent contractor appraiser, to the extent the information has been communicated to the appraisal management company by the appraisal management company's client:

(A) The geographic location of the real property, which may include the metropolitan statistical area, metropolitan division, area outside of a metropolitan statistical area, county, postal code, legal description or other geographic information identifying where the real property is situated; and

(B) The type of real property the assignment covers.

(2) An assignment meeting the minimum requirements under section (1) of this rule does not relieve an appraiser from meeting any legal obligations related to the appraiser's license or certification under ORS Chapter 674 and OAR chapter 161.

(3) The board retains jurisdiction over administrative inquiries and actions involving misrepresentations made by an individual appraiser regarding competency.

Stat. Auth.: 2010 OL Ch. 87, § 2

Stat. Implemented: 2010 OL Ch. 87, § 2

Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0130

### Dispute Resolution Process

(1) An appraisal management company shall establish a process that at a minimum allows a person with an interest in a real estate transaction to:

(a) Request the appraiser consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal;

(b) Request the appraiser provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Request the appraiser correct errors in the appraisal report.

(2) A person with an interest in a real estate transaction shall make a request under this rule in writing or in a form easily reduced to writing. The request shall include, as applicable:

(a) Additional, appropriate property information, including additional comparable properties; or

(b) Factual corrections and an explanation for the basis of the corrections.

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(3)(a) An appraisal management company that receives a request under this rule shall, within five business days, forward the request to the appraiser.

(b) An appraisal management company that receives a request under this rule and performs quality control examinations shall, within five business days, determine if the request meets the criteria in section (1) of this rule and either:

(A) Reject the request and notify the requestor in writing or in a form easily reduced to writing; or

(B) Forward the request to the appraiser.

(4)(a) An appraisal management company shall require an appraiser to respond to a request under this rule within five business days of the request from the appraisal management company, unless circumstances necessitate a delay in responding to a request under this rule.

(b) An appraisal management company shall notify the person in writing or in a form easily reduced to writing of the circumstance necessitating a delay, and shall provide an estimate of the time the appraisal management company believes is needed to respond to a request.

(5) The appraisal management company shall require the appraiser to communicate in writing or in a form easily reduced to writing that:

(a) The appraiser corrected errors in the report determined to be factual errors, and identify which errors were corrected;

(b) The appraiser fully considered the additional, appropriate property information, including additional comparable properties, provided by the person with an interest in the real estate transaction into the appraisal report;

(c) The appraiser provided further detail, substantiation, or explanation for the appraiser's value conclusion;

(d) The appraiser fully considered and rejected incorporating the additional, appropriate property information, including additional comparable properties, into the appraisal report; or

(e) The appraiser would not provide further detail, substantiation, or explanation for the appraiser's value conclusion.

(6) An appraisal management company shall retain a record of each dispute processed under this rule and a record of disputes where circumstances necessitated a delay in meeting the requirements of this section for:

(a) Not less than five years after the date of completion of the appraisal to which the record pertains; or

(b) For a period of not less than two years after final disposition of a judicial proceeding in which testimony relating to the records was given, whichever period expires later.

Stat. Auth.: 2010 OL Ch. 87, § 7

Stat. Implemented: 2010 OL Ch. 87, § 7

Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0140

### Renewal or Reactivation of Registration

(1) An appraisal management company renewing a registration as an appraisal management company shall submit to the director all of the following information:

(a) Renewal fees established in OAR 441-674-0915;

(b) A copy of the surety bond required by 2010 Or Laws ch 87, § 3 in a form and format approved by the director;

(c)(A) A signed statement on a form approved by the director that the appraisal management company continues to maintain a system, as stated on the appraisal management company's initial application for registration, to verify the competency of appraisers on the business entity's panel meeting the minimum requirements in OAR 441-674-0120; and

(B) A short description of the business entity's system to verify competency;

(d)(A) A signed statement on a form approved by the director that the business entity continues to maintain a system, as stated on the appraisal management company's initial application for registration, a dispute resolution process meeting the minimum requirements established in OAR 441-674-0130; and

(B) A copy of the portion of the business entity's engagement letter detailing the dispute resolution process;

(e) A signed statement on a form approved by the director that the business entity maintains and retains a detailed record of each appraisal management services request the entity receives and the appraiser who performs the real estate appraisal activity contained in the request for:

(A) Not less than five years after the date of completion of the appraisal to which the record pertains; or

(B) For a period of not less than two years after final disposition of a judicial proceeding in which testimony relating to the records was given, whichever period expires later.

(2)(a) If a business entity does not apply to renew a registration on or before the entity's renewal date, the business entity shall reactivate the entity's registration by applying for a new registration as an appraisal management company. For purposes of fees payable to the director under OAR 441-674-0910, the business entity shall pay a nonrefundable renewal fee based on the number of appraisals for which the appraisal management company performed appraisal management services in Oregon or otherwise served as a third-party broker of real estate appraisal activity in Oregon.

(b) A business entity in the process of reactivating a registration as an appraisal management company under this section shall cease operating as an appraisal management company or providing appraisal management services until the business entity's registration is reactivated.

Stat. Auth.: 2010 OL Ch. 87, § 2

Stat. Implemented: 2010 OL Ch. 87, § 2

Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0210

### Subject Individuals

For purposes of OAR 441-674-0220 to 441-674-0250, a "subject individual" means:

(1) The person designated as the controlling person under 2010 Or Laws ch 87, § 2;

(2) Each individual with an ownership interest of ten percent or more of an appraisal management company; and

(3) In cases where ownership interest of ten percent or more of the appraisal management company is held by an entity other than an individual:

(a) An individual who wholly owns a corporation that owns ten percent or more of an appraisal management company;

(b) An individual wholly owning and serving as the only general partner in a limited partnership that owns ten percent or more of an appraisal management company;

(c) An individual wholly owning and managing a limited liability company that owns ten percent or more of an appraisal management company; or

(d) An individual who wholly owns any other type of business entity that owns ten percent or more of an appraisal management company.

Stat. Auth.: ORS 181.534 & 705.135

Stat. Implemented: 2010 OL Ch. 87, § 2, ORS 181.534 & 705.141

Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0220

### Criminal Records Check Required

(1) The director shall conduct a criminal records check on a subject individual as a condition of issuing a registration as an appraisal management company under 2010 Or Laws ch 87, § 2 and OAR chapter 441, division 674.

(2) The director may require additional information from the subject individual as necessary to complete the criminal records check and fitness determination, such as, but not limited to, proof of identity; or additional criminal, judicial, or other background information.

(3) The director may request or conduct a Law Enforcement Data System Criminal Records Check, an Oregon Criminal Records Check, a Nationwide Criminal Records Check, or any combination thereof to meet the requirements of this rule.

(4) If a subject individual refuses to consent to a criminal records check, including fingerprint identification, the director shall not issue a registration as an appraisal management company. A subject individual may not contest any determination made based on a refusal to consent.

Stat. Auth.: ORS 181.534 & 705.135

Stat. Implemented: 2010 OL Ch. 87, § 2, ORS 181.534 & 705.141

Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0230

### Information Required from Subject Individuals

A subject individual shall submit to the director the following information:

(1) A complete, signed copy of a criminal records request form supplied by the director. The criminal records request form shall require the following information: name, birth date, Social Security Number, driver's license or identification card number, prior residency in other states, and any other identifying information deemed necessary by the director.

# ADMINISTRATIVE RULES

(2) A FD-258 standard fingerprint card published by the Federal Bureau of Investigation and completed by a law enforcement agency or a commercial fingerprinting entity.

Stat. Auth.: ORS 181.534 & 705.135  
Stat. Implemented: 2010 OL Ch. 87, § 2, ORS 181.534 & 705.141  
Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0240

### Potentially Disqualifying Crimes; Process

(1) A "potentially disqualifying crime" means a crime that:

(a) Reflects moral turpitude, or an act or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others and for the laws of the state and the nation; and

(b) Is rationally connected to the business entity's fitness to act as a controlling person or own ten percent or more of an appraisal management company.

(2) The director shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(3) A subject individual shall not be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged under ORS 419A.260 and 419A.262.

(4) If a subject individual is denied as not fit, the business entity may not obtain a registration as an appraisal management company unless the subject individual divests all or part of the individual's ownership interest in the business entity or the business entity designates another control person, whichever is applicable.

(5) The director shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via courier, or registered or certified mail to the most current address provided by the subject individual of the disqualification. Responsibility for furnishing the most current address remains with the subject individual.

(6) A final fitness determination is a final order of the director unless the affected subject individual requests a contested case hearing under ORS Chapter 183. A subject individual may contest a fitness determination made under these rules that he or she is fit or not fit to act as a controlling person or own ten percent or more of an appraisal management company under ORS Chapter 183.

Stat. Auth.: ORS 181.534 & 705.135  
Stat. Implemented: 2010 OL Ch. 87, § 2, ORS 181.534 & 705.141  
Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0250

### Fees for Fingerprinting and Background Checks

Each person subject to 441-674-0210 to 441-674-0250 shall pay to the director an amount not to exceed the fees charged to the director for the purpose of processing criminal record checks.

Stat. Auth.: ORS 181.534 & 705.135  
Stat. Implemented: 2010 OL Ch. 87, § 2, ORS 181.534 & 705.141  
Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0310

### Termination or Cancellation of Surety Bond or Letter of Credit

(1) If the surety bond or letter of credit an appraisal management company maintains is terminated or cancelled, the appraisal management company shall file a replacement surety bond or letter of credit as soon as practicable or within five days of the cancellation or termination, whichever occurs sooner.

(2) An appraisal management company that does not file a replacement surety bond or letter of credit under section (1) of this rule shall surrender the appraisal management company's registration and cease operating as an appraisal management company.

Stat. Auth.: 2010 OL Ch. 87, § 3  
Stat. Implemented: 2010 OL Ch. 87, § 3  
Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0910

### Initial Fees Payable to the Director

(1) A business entity that has not previously conducted business in Oregon, a business entity performing appraisal management services for not more than 1,000 instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-

party broker of real estate appraisal activity for not more than 1,000 instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the director:

- (a) A nonrefundable application fee of \$1,000;
- (b) A nonrefundable registration fee of \$1,500; and
- (c) Subject to section (4) of this rule, an audit fee of \$450.

(2) A business entity performing appraisal management services for more than 1,000 but less than 5,000 instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-party broker of real estate appraisal activity for more than 1,000 but less than 5,000 instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the director:

- (a) A nonrefundable application fee of \$1,500;
- (b) A nonrefundable registration fee of \$3,500; and
- (c) Subject to section (4) of this rule, an audit fee of \$750.

(3) A business entity performing appraisal management services for more than 5,000 instances of real estate appraisal activity in Oregon in the previous calendar year, or a business entity otherwise serving as a third-party broker of real estate appraisal activity for more than 5,000 instances of real estate appraisal activity in Oregon in the previous calendar year, shall pay to the director:

- (a) A nonrefundable application fee of \$2,000;
- (b) A nonrefundable registration fee of \$6,000; and
- (c) Subject to section (4) of this rule, an audit fee of \$1,500.

(4) If the director collects from each appraisal management company the actual cost of an examination as permitted by applicable law, the director shall apply any audit fees paid by a business entity under sections (1) to (3) of this rule toward the business entity's audit.

Stat. Auth.: 2010 OL Ch. 87, § 2  
Stat. Implemented: 2010 OL Ch. 87, § 2  
Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0915

### Renewal Fees Payable to the Director

(Reserved)  
Stat. Auth.: 2010 OL Ch. 87, § 2  
Stat. Implemented: 2010 OL Ch. 87, § 2  
Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-674-0920

### Annual Reports

For calendar year 2011 and each year thereafter, an appraisal management company shall submit to the director on March 31 of the following year a report disclosing the following information on a form approved by the director:

(1) The number of appraisals for which the appraisal management company performed appraisal management services in Oregon or otherwise served as a third-party broker of real estate appraisal activity in Oregon.

(2) Any change in the designated controlling person.

(3) Any changes in ownership that result in an individual or wholly-owned and managed business entity owning more than 10 percent of an appraisal management company or less than 10 percent of the appraisal management company.

(4) Any action taken by a state to refuse to issue, deny, cancel or revoke a license, certification or registration to act as an appraiser or as an appraisal management company.

Stat. Auth.: 2010 OL Ch. 87, § 2  
Stat. Implemented: 2010 OL Ch. 87, § 2  
Hist.: FCS 10-2010(Temp), f. & cert. ef. 9-1-10 thru 12-31-10; FCS 13-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Revise administrative and reporting requirements and fees for certified providers and master trustees in Oregon.

**Adm. Order No.:** FCS 14-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 441-930-0035, 441-930-0045, 441-930-0065, 441-930-0068, 441-930-0255, 441-930-0267

**Rules Amended:** 441-930-0010, 441-930-0030, 441-930-0070, 441-930-0080, 441-930-0210, 441-930-0220, 441-930-0230, 441-930-0240, 441-930-0250, 441-930-0260, 441-930-0270, 441-930-0290, 441-930-0300, 441-930-0310, 441-930-0320, 441-930-0330, 441-930-0350, 441-930-0360

**Rules Repealed:** 441-930-0280, 441-930-0340



# ADMINISTRATIVE RULES

**Subject:** The proposed rules address recent problems related to the trusting of prearrangement funds, as well as consultation with industry leaders. They clarify requirements related to certified providers authorized to sell prearrangement or preconstruction sales contracts and those for master trustees which have the fiduciary responsibility for trusted funds from such sales. The rules would increase fees for master trustees and certified providers, change reporting requirements, delete provisions already addressed in ORS 97, clarify the use of irrevocable contracts, and clarify the responsibilities for limited operation certified providers. They would also clarify the timeline for cancellation of sureties required for certain endowment care cemeteries.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-930-0010

### Definitions

In addition to the definitions in ORS 97.010 and 97.923, the following definitions apply to OAR 441-930-0010 to 441-930-0360:

(1) “Applicant” means an entity applying to the director for a certification concerning prearrangement plans or for a registration to serve as a master trustee.

(2) “Director” means the Director of the Department of Consumer and Business Services.

(3) “Limited Operations Certified Provider” means a certified provider responsible for administering 10 or fewer prearrangement or preconstruction sales contracts which have a cumulative value of less than \$20,000.

(4) “Registrant” means an entity holding a registration for a master trustee, issued by the director.

(5) “Trust Agreement” means any agreement governing a trust fund established to receive the proceeds of a prearrangement or preconstruction plan and administered by a registered master trustee.

(6) “Unconscionable tactics” include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer’s physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement; or

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit.

Stat. Auth.: ORS 97.926

Stats. Implemented: ORS 97.926

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0010; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0030

### Applications for Registration of Master Trustees

(1) Each entity desiring to register as master trustee shall apply by submitting a written application with the director.

(2) The application must contain the following on a form prescribed by the director:

(a) Information concerning the applicant’s identity and business address(es);

(b) A list of all officers, directors, and owners of the business;

(c) Personal background and business, professional, or work history of all persons identified in subsection (2)(b) of this rule;

(d) Proof that the entity is legally qualified to conduct business in this state, having made the appropriate filings with the Secretary of State;

(e) The depositories the applicant will use for funds received under the appointment from the certified provider;

(f) Financial statements including:

(A) A copy of the applicant’s most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles;

(B) If the audited financial statement is more than six months old, an internally prepared statement for the most recent month end; and

(g) A registration fee as set in OAR 441-930-0270.

(3) The director may conduct a background check of any of the officers, directors, and owners applying for registration. The background check may include information solicited from the Oregon State Police.

(4) A registration is continuing and remains in effect until it is surrendered by the registrant or revoked or suspended by the director.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0030; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 7-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0035

### Renewal Procedure

Submission of the annual report pursuant to OAR 441-930-0068 and the fees pursuant to 441-930-0270 shall constitute renewal of the application for registration.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0045

### Material Changes, Notice of Civil and Criminal Actions

A master trustee must provide information to the director within 30 days of a material change to any information contained in the original application or any documents submitted with or as part of the application, including:

- (1) Bankruptcy;
- (2) Civil or criminal actions described on the application;
- (3) Disciplinary disclosure answers;
- (4) Change in additional affiliated business entity name;
- (5) Change in control or ownership;
- (6) Change in form of organization;
- (7) Change of address;
- (8) Change in scope of business; or
- (9) Change in the depository used by a master trustee.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0065

### When Application Deemed Abandoned

(1) For purposes of this rule, the term “application” includes all documents, information and fees prescribed for the registration of a master trustee.

(2) An application shall be deemed deficient when:

(a) The applicant has paid insufficient fees and the director has notified the applicant that fees are insufficient;

(b) Documents required to be submitted to the director by OAR 441-930-0030 and 441-930-0035 have not been submitted by the applicant; or

(c) The applicant has not submitted information requested by the director.

(3) An application shall be deemed abandoned if:

(a) The application has been on file for a minimum of 60 days;

(b) The application is deficient; and

(c) The applicant has failed to respond within 30 days to the director’s written notice of warning of abandonment.

(4) An applicant whose application has been abandoned may reapply by submitting a new application and registration fee.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0068

### Annual Report

Each master trustee is responsible for and shall file an annual report with the director by April 1 of each year on forms provided by the director. The report shall cover the preceding calendar year and shall include information on trusted funds:

(1) The actual value at the beginning and end of the calendar year;

(2) Deposits and withdrawals;

(3) Income earned and fees paid;

(4) Taxes paid for beneficiaries;

(5) Gains and losses; and

(6) The balance of all trust accounts as of December 31.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0070

### Examination of Master Trustee

(1) Each master trustee that is or should be registered may be subject to an annual examination by the director. The director may, conduct an examination at the office of the master trustee or at the office of the director. The examination will be of the condition and resources of the master trustee, including:

# ADMINISTRATIVE RULES

- (a) A review of the minutes of the annual meeting of owners and any special meeting;
  - (b) A review of all board or management meetings;
  - (c) Operating policies and procedures;
  - (d) Security of funds, including documentation demonstrating that all trust funds are received from each certified provider;
  - (e) Investment vehicles;
  - (f) Receipt and dispersal of funds;
  - (g) Investment and banking accounts;
  - (h) Audit reports; and
  - (i) Regulatory audit reports.
- (2) A master trustee shall pay to the director the fees and costs of examination described in OAR 441-930-0270.
- (3) At the discretion of the director, a master trustee located outside Oregon may make the books and records available for examination in Oregon.
- (4) Upon completion of an examination conducted pursuant to OAR 441-930-0070 or 441-930-0260 the director shall issue a written report to the master trustee indicating the examination procedures applied and the examination findings.

Stat. Auth.: ORS 97.926, 97.935, & 97.947

Stats. Implemented: ORS 97.935 & 97.947

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0070; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0080

### Master Trustee Rules of Conduct

(1) A master trustee is a fiduciary and has a duty to act solely for the benefit of purchasers of prearrangement sales contracts.

(2) The fees to be charged shall be described in a written agreement between the master trustee and each certified provider that has appointed the master trustee.

(3) A master trustee may delegate administration, record keeping, custody, investment or management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The master trustee may not delegate, and shall exercise reasonable care, skill and caution in:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;

(c) Periodically reviewing the agent's actions to monitor and ensure the agent's performance and compliance with the terms of the delegation; and

(d) Ensuring that all trust funds received are from a certified provider by a sales contract, including, but not limited to ensuring that all contracts are accounted for and ensuring certification of providers from whom they accept trust funds.

(4) A master trustee shall invest and manage trust assets as a prudent investor would. A master trustee that complies with ORS 130.755 satisfies this requirement.

(5) In investing and managing trust assets, regardless of whether those functions have been delegated, a master trustee may only incur fees and expenses that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the master trustee, not to exceed the maximum specified in ORS 97.943.

Stat. Auth.: ORS 97.926 & 97.935

Stats. Implemented: ORS 97.935

Hist.: FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0210

### Application for Certification

(1) Each entity desiring to obtain a certification shall apply by submitting a written application with the director.

(2) An application must contain the following on or with a form prescribed by the director:

(a) A list of all officers, directors, and owners of the business;

(b) Information concerning the applicant's identity and business address(es);

(c) If the applicant is an individual or sole proprietorship, the applicant's social security number. Provision of this number is mandatory and failure to provide the applicant's social security number shall be considered grounds for denying certification to the applicant.

(d) The business, professional or work history of all persons identified in subsection (2)(a) of this rule;

(e) Proof that the entity is legally qualified to conduct business in this state, having made the appropriate filings with the Secretary of State;

(f) The master trustee and depository(ies) the applicant intends to use for funds received from the sale of the prearrangement plans;

(g) For certified providers who place trust funds in a depository and will not be using a master trustee for long-term trust investment, financial statements including:

(A) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles; and

(B) If the audited financial statement is more than six months old, an internally prepared statement for the most recent month;

(h) A list of prearrangement plans to which the applicant was a party at the date of application; and

(i) A certification fee as set in OAR 441-930-0270.

(3) The director may conduct a background check of any officer, director, or owner applying for certification. The background check may include information solicited from Oregon State Police.

(4) Authority for operation as a certified provider is continuing and remains in effect until surrendered by the provider or revoked or suspended by the director.

Stat. Auth.: ORS 97.926, 97.933, & 97.948

Stats. Implemented: ORS 97.933 & 97.948

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; DOC 2-2002(Temp) f. & cert. ef. 2-12-02 thru 8-1-02; DO 3-2002, f. & cert. ef. 5-23-02; Renumbered from 440-300-0210; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 7-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0220

### Renewal Procedure

Submission of the annual report pursuant to OAR 441-930-0250 and the fees pursuant to 441-930-0270 shall constitute renewal of the application for certification.

Stat. Auth.: ORS 97.926 & 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0220; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0230

### Material Changes, Notice of Civil and Criminal Actions

A certified provider must provide information to the director within 30 days of a material change to any information contained in the original application or any documents submitted with or as a part of the application, including:

(1) Bankruptcy;

(2) Civil or criminal actions described on the application;

(3) Disciplinary disclosure answers on the application;

(4) Change in additional affiliated business entity name;

(5) Change in control or ownership;

(6) Change in form of organization;

(7) Change of address for a master trustee;

(8) Change in scope of business;

(9) Change in any depository used by the certified provider; or

(10) Change in the master trustee being used by the certified provider.

Stat. Auth.: ORS 97.926 & 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0230; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0240

### When Application Deemed Abandoned

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for a certified provider as set forth in ORS 97.923 to 97.949, OAR 441-930-0030, 441-930-0210 and 441-930-0270.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the director has notified the applicant that fees are insufficient;

(b) Documents required to be submitted to the director by OAR 441-930-0210 or 441-930-0020 have not been submitted by the applicant; or

(c) Information requested by the director has not been submitted by the applicant.

(3) An application shall be deemed abandoned if:

(a) The application has been on file for a minimum of 60 days;

(b) The application is deficient; and

# ADMINISTRATIVE RULES

(c) The applicant has failed to respond within 30 days to the director's written notice of warning of abandonment.

(4) An applicant whose application has been abandoned may reapply by submitting a new application, including fees.

Stat. Auth.: ORS 97.926 & 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0240; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0250

### Annual Report

Each certified provider is responsible for and shall file an annual report with the director by April 1 of each year on forms provided by the director. The report shall cover the preceding calendar year and shall include:

(1) The actual value at of all trusted funds at the beginning and end of the calendar year;

(2) Deposits and withdrawals from trusted funds;

(3) Income earned and fees paid on trust accounts;

(4) Withdrawals from principal of the trust account;

(5) Expenses withdrawn from trust account income for master trustee, accounting, record keeping and administration, depository and investment fees;

(6) Taxes paid for the benefit of beneficiaries;

(7) Gains and losses of trusted funds;

(8) For certified providers who have placed trust funds with a depository, a copy of their most recent audited annual financial statement, including a balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles; and

(9) An inventory of the details of the merchandise specified in ORS 97.933 from a certified provider that has sold and delivered funeral merchandise, cemetery merchandise, or a combination..

Stat. Auth.: ORS 97.926 & 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; DOC 2-2002(Temp) f. & cert. ef. 2-12-02 thru 8-1-02; DO 3-2002, f. & cert. ef. 5-23-02; Renumbered from 440-300-0250; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0255

### Reporting by Limited Operations Certified Provider

A limited operations certified provider must report the following activities to the director within 15 days of the occurrence:

(1) Transfer of any contract to another certified provider; or

(2) Sale of any new prearrangement or preconstruction contract.

Stat. Auth.: ORS 97.926

Stats. Implemented: ORS 97.933

Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0260

### Examination of Certified Providers

(1) Each provider that is or should be certified is subject to an examination by the director. The director may conduct an examination of the condition and resources, including a review of the sales contracts used by the certified provider, to determine whether the provider is complying with requirements of ORS 97.923 to 97.949, the laws of this state and the rules of the director.

(2) A provider shall pay to the director all fees and costs of an examination pursuant to the provisions of OAR 441-930-0270.

(3) Upon the motion of the director or upon receipt of a complaint by a customer of the provider, the director may examine the provider with respect to any violation. In lieu of an annual on-site examination, the director may accept a report prepared by an independent accounting firm. Reports so accepted are considered for all purposes as an official report of the director.

(4) The director may examine a record relating to a prearrangement plan at any place and in any manner the director considers necessary to protect the interests of the purchasers or beneficiaries.

(5) Certified providers who maintain books and records outside the state of Oregon may, at the discretion of the director, produce the records in Oregon for examination.

(6) Upon completion of an examination conducted by the director shall issue a written report to the certified provider indicating the examination procedures applied and the examination findings.

Stat. Auth.: ORS 97.926, 97.933, & 97.947

Stats. Implemented: ORS 97.947

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0260; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0267

### Irrevocable Prearrangement Sales Contracts

(1) Certified providers may only issue an irrevocable prearrangement sales contract in limited circumstances. The certified provider must receive proof from the purchaser or beneficiary that the beneficiary of the trust is:

(a) Currently receiving public assistance; or

(b) Has filed the necessary papers and started the formal process to receive benefits.

(2) An irrevocable trust may not be cancelled, changed, or revised to become any other type of preneed funding mechanism and may not be distributed for any purpose other than the death of the beneficiary.

(3) A revocable contract may be converted to an irrevocable contract upon agreement of all parties to reflect a change of circumstances of the beneficiary of the sales contract.

Stat. Auth.: ORS 97.926

Stats. Implemented: ORS 97.939 & 97.943

Hist.: FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0270

### Fees Assessed to Certified Providers and Registered Master Trustees

The director shall annually assess the following fees for each registered master trustee, certified provider, or applicant:

(1) Certification Fee — \$450 per certified provider. Each location is a separate entity for purposed of this fee.

(2) Registration Fee — \$450 per master trustee.

(3) Limited Operations Fee — \$150.

(4) Exam Fees — \$75 per hour for each examiner, plus costs of an examination.

(5) If the books and records are located outside Oregon, the certified provider or master trustee must pay travel and per diem expenses.

Stat. Auth.: ORS 97.926, 97.933 & 97.935

Stats. Implemented: ORS 97.933 & 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0270; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 7-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 8-2008, f. & cert. ef. 8-28-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0290

### Unprofessional Conduct

An entity engaging in the following conduct is subject to probation, suspension, revocation, or denial of a certification or registration and assessment of a civil penalty pursuant to ORS 97.948 and OAR 441-930-0310:

(1) Furnishing false or misleading information to the director in connection with:

(a) Obtaining, renewing, reinstating, or maintaining certification or registration;

(b) The filing of an annual report; or

(c) An investigation;

(2) Failing to furnish accurate and understandable price information to consumers;

(3) Employing any unconscionable tactic in connection with the offer or sale of a prearrangement plan;

(4) Failing to make and verify trust deposits in the amounts and within the times specified in ORS 97.941;

(5) Withdrawing principal or income of a trust account in excess of what is permitted pursuant to ORS 97.943;

(6) Failing to comply with the annual reporting requirements as required by ORS 97.933 or these rules;

(7) Failing to provide the goods and services agreed to in a sales contract;

(8) Using trust funds for non-trust purposes;

(9) Failing to release trust funds to the rightful payee within 30 days of the date of request for release; or

(10) Failing to comply with any other provision of ORS 97.923 to 97.949, or these rules.

Stat. Auth.: ORS 97.926, 97.933, & 97.935

Stats. Implemented: ORS 97.933, 97.935, 97.941, & 97.948

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0290; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11



# ADMINISTRATIVE RULES

## 441-930-0300

### Notice of Complaint

(1) Each certified provider and each master trustee who has filed a complaint against any of its partners, officers, or directors, or, associated persons located in Oregon, with any law enforcement agency, any other regulatory agency with jurisdiction over prearrangement plans, or any bonding company regarding any loss arising from alleged acts of such person, shall send a copy of the complaint to the director within ten calendar days following its filing with the other agency or bonding company.

(2) The certified provider or master trustee shall notify the director within ten calendar days of learning of any action initiated by a law enforcement agency or regulatory agency against any of its partners, officers, or directors, or associated persons located in Oregon on the basis of something other than a complaint from the certified provider or master trustee.

(3) The certified provider or master trustee shall file a copy of any finding, censure, fine, suspension, or expulsion made as a result of an action by any law enforcement agency or other regulatory agency with the director within ten calendar days following receipt of the document.

Stat. Auth.: ORS 97.926

Stats. Implemented: ORS 97.933 & 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0300; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0310

### Revocation, Suspension and Denial of Certificate or Registration

The director may impose a civil penalty or probation, or revoke, suspend, or deny a certification of a certified provider or a registration of a master trustee when one or more of the following conditions exist:

(1) The certified provider's license under ORS 692.160 expires or is suspended or revoked by the State Mortuary and Cemetery Board;

(2) The certified provider or master trustee fails to submit an annual report required by ORS 97.933;

(3) The certified provider or master trustee fails to submit the certification or registration fee required by OAR 441-930-0270;

(4) The certified provider or master trustee fails to maintain or denies the director access to the financial records and supporting documents necessary to examine their annual report;

(5) The certified provider or master trustee has filed a materially false or misleading report with the director;

(6) The certified provider fails to deliver or deposit prearrangement plan receipts to the master trustee or depository within five business days as required by ORS 97.941;

(7) The certified provider or master trustee fails to account to interested persons for monies received;

(8) The certified provider or master trustee has willfully or repeatedly violated or failed to comply with any provision of ORS 97.923 to 97.949, or OAR 441-930-0030 through 441-930-0360;

(9) The certified provider or master trustee is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the business of a certified provider or master trustee, respectively;

(10) The certified provider or master trustee is the subject of disciplinary action by another state or government agency provided the activity subject to discipline would constitute a violation of Oregon law or administrative rules;

(11) The director finds that the certified provider, master trustee, or an applicant for certification or for registration has been convicted of a felony or a misdemeanor that involved dishonesty or fraud, in this state or any other state;

(12) The director finds that an administrative agency, in this state or any other state, has issued a final order against the certified provider, master trustee, or an applicant for certification or for registration;

(13) The director finds that the certified provider, master trustee, or an applicant for certification or for registration has an outstanding judgment by a court, in this state or any other state; or

(14) The director finds that the applicant or an officer, director, or owner of the applicant does not possess the financial and business experience required by these rules.

Stat. Auth.: ORS 97.926, 97.933 & 97.935

Stats. Implemented: ORS 97.948

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0310; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0320

### Notice Requirements

(1) The director shall provide written notice to the certified provider, master trustee, or applicant and to the State Mortuary and Cemetery Board of the director's intent to impose discipline pursuant to ORS 97.936, 97.948, or to deny an application.

(2) The director shall provide written notice of the Director's Final Order to impose discipline pursuant to ORS 97.936, 97.948, or to deny an application from:

(a) A certified provider or certified provider applicant that sells or is responsible for administering a prearrangement or preconstruction plan trust accounts; or

(b) A master trustee or master trustee applicant, holding trust funds from a certified provider.

(3) This notice shall state:

(a) The reasons for the action;

(b) The effective date of the action; and

(c) The right to request a hearing under ORS Chapter 183.

Stat. Auth.: ORS 97.933 & 97.935

Stats. Implemented: ORS 97.936 & 97.948

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0320; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 5-2007, f. 10-11-07, cert. ef. 1-1-08; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0330

### Records to be Retained

(1) Each certified provider and master trustee shall maintain records to document the balances and transactions included in its annual report filed pursuant to OAR 441-930-0068 and 441-930-0250 and shall retain these records for examination by the director. Each certified provider and master trustee shall make, keep and preserve the following books, accounts and other records for a period of three years after funds from all trust have been distributed, at need or upon cancellation of the contract. The records required to be maintained include, but are not limited to:

(a) Work papers documenting preparation of the annual report;

(b) General ledger or subsidiary ledger account records relating to prearrangement plans;

(c) Receipts register;

(d) Sales registers that show the delivered merchandise and/or services provided in the appropriate trust agreement file, including the name and date of birth of the beneficiary and a description of the merchandise;

(e) Work papers documenting distribution of interest income to individual trusts in a common trust account;

(f) Prearrangement or preconstruction contract files, trust agreement files, and other supporting documentation related to prearrangement transactions. Every contract sold or to be administered by the certified provider must be accounted for and retained, even if they were voided or not issued;

(g) Bank statements; and

(h) Statements from other financial institutions.

(2) Books, accounts, and other records required to be maintained under section (1) of this rule may be maintained:

(a) In a photographic, electronic, and other similar form; or

(b) At a location in Oregon, unless specifically authorized by the director.

Stat. Auth.: ORS 97.926, 97.933 & 97.935

Stats. Implemented: ORS 97.947

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0330; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0350

### Funeral and Cemetery Consumer Protection Trust Fund

(1) The director shall order restitution from the Funeral and Cemetery Consumer Protection Trust Fund when the following conditions are met:

(a) A claim for restitution is submitted to the director on forms supplied by the director accompanied by:

(b) A copy of the prearrangement or preconstruction contract;

(c) Copies of canceled checks or payment receipts demonstrating payment;

(d) Correspondence with the provider concerning attempts to obtain repayment; and

(e) Any other information the claimant believes may be helpful to document the claim.

(2) The director will review the claim form and accompanying documentation to determine if a loss was incurred by the claimant on a prearrangement or preconstruction sales contract.

(3) Sufficient funds must be available in the Funeral and Cemetery Consumer Protection Trust Fund to pay the claim.

# ADMINISTRATIVE RULES

(4) The director shall provide written notice of its intent to order restitution or not to order restitution to the maker of the claim and to the person or entity that is the subject of the claim.

Stat. Auth.: ORS 97.926 & 97.945

Stats. Implemented: ORS 97.945

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0350; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

## 441-930-0360

### Surety Bond Requirements for Endowment Care Cemeteries

(1) If a surety bond is revoked, or otherwise terminated, the endowment care cemetery must immediately file a replacement bond.

Failure to send the notice at least 30 days in advance will not preclude the endowment care cemetery from being subject to the provisions of ORS 97.923 to 97.949 and 692.180.

(2) An endowment care cemetery may cancel the surety bond or letter of credit upon 30 days advance notice to the director of completion of the covered construction of all crypts and niches or burial vaults or markers that were part of the development.

Stat. Auth.: ORS 97.926

Stats. Implemented: ORS 97.929

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0360; FCS 3-2004, f. & cert. ef. 9-30-04; FCS 2-2006, f. & cert. ef. 2-22-06; FCS 14-2010, f. 12-30-10, cert. ef. 1-1-11

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## Department of Consumer and Business Services, Insurance Division Chapter 836

**Rule Caption:** Adoption of Annual and Supplemental Statement Blanks and Instructions for Reporting Year 2010.

**Adm. Order No.:** ID 22-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 836-011-0000

**Subject:** This rulemaking prescribes, for reporting year 2010, the required forms for the annual and supplemental financial statements required of insurers and health care service contractors under ORS 731.574, as well as the necessary instructions for completing the forms.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-011-0000

### Annual Statement Blank and Instructions

Annual Statement Blank and Instructions

(1) For the purpose of complying with ORS 731.574, every authorized insurer, including every health care service contractor, shall file its financial statement required by ORS 731.574 for the 2010 reporting year on the annual statement blank approved for the 2010 reporting year by the National Association of Insurance Commissioners, for the type or types of insurance transacted by the insurer.

(2) Every authorized insurer, including every health care service contractor, shall complete its annual statement blank under section (1) of this rule for the 2010 reporting year, according to the applicable instructions published for that year by the National Association of Insurance Commissioners, for completing the blank, as required by ORS 731.574.

(3) Every authorized insurer, including every health care service contractor, shall file each annual statement supplement for the 2010 reporting year, as required by the applicable instructions published for that year by the National Association of Insurance Commissioners, and shall complete the supplement according to those instructions.

(4) This rule is adopted under the authority of ORS 731.244, 731.574 and 733.210 for the purpose of implementing ORS 731.574 and 733.210.

Stat. Auth.: ORS 731.244, 731.574 & 733.210

Stats. Implemented: ORS 731.574 & 733.210

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 10-1994, f. & cert. ef. 12-14-94; ID 7-1995, f. & cert. ef. 11-15-95; Renumbered from 836-013-0000; ID 4-1996, f. 2-28-96, cert. ef. 3-1-96; ID 16-1996, f. & cert. ef. 12-16-96; ID 11-1997, f. & cert. ef. 10-9-97; ID 16-1998, f. & cert. ef. 11-10-98; ID 5-1999, f. & cert. ef. 11-18-99; ID 1-2001, f. & cert. ef. 2-7-01; ID 4-2002, f. & cert. ef. 1-30-02; ID 6-2003, f. & cert. ef. 12-3-03; ID 1-2006, f. & cert. ef. 1-23-06; ID 9-2007, f. & cert. ef. 11-8-07; ID 1-2009, f. & cert. ef. 1-29-09; ID 11-2009, f. & cert. ef. 12-9-09; ID 22-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Changes in process for applying for insurance license.

**Adm. Order No.:** ID 23-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 836-071-0118

**Rules Amended:** 836-009-0007, 836-071-0110, 836-071-0120

**Subject:** These rules restructure the order in which a person applies for a license to eliminate a pre-approval process that is currently conducted before other steps in the licensing process, such as examinations and background checks. Under the reorganized process, the pre-approval requirement is deleted entirely. The applicant will now complete all other steps in the licensing process before submitting the application to the Insurance Division.

To clarify the process, a new rule states the order of the process for applying for a license.

The rules also amend the fee schedule for examinations, in most cases reducing the amount of the fee; if the fee is not reduced, it remains unchanged.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-009-0007

### Fees

(1) The following fees apply to certificates of authority:

(a) The fee for application for a certificate of authority to transact insurance as an insurer is \$2,500. The fee for application as a domestic insurer must be paid when application for a permit to organize as a domestic insurer is made. Otherwise, the fee must be paid when the application for the certificate is made;

(b) The fee for annual continuation of a certificate of authority issued under subsection (a) of this section is \$1,500;

(c) The fee for reinstatement of a certificate of authority is \$100.

(2) The fees in this section apply to examinations for licenses for insurance producers, adjusters and insurance consultants. The fees may be charged by the examination vendor under contract with the Department of Consumer and Business Services and are as follows:

(a) Examination fees:

(A) Insurance producer, property and casualty insurance or life and health insurance — \$55;

(B) Insurance producer, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — \$45;

(C) Surplus lines licensee — \$45;

(D) Adjuster, general lines insurance or life and health insurance — \$45;

(E) Adjuster, health insurance or any single other line designated by rule — \$45;

(F) Consultant, life and health insurance or general lines insurance — \$55;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — \$45;

(b) Reexamination fees, to be charged when the applicant retakes an examination:

(A) Insurance producer, property and casualty insurance or life and health insurance — \$55

(B) Insurance producer, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — \$45;

(C) Surplus lines licensee — \$45;

(D) Adjuster, general lines insurance or life and health insurance — \$45;

(E) Adjuster, health insurance or any single other line designated by rule — \$45;

(F) Consultant, life and health insurance or general lines insurance — \$55;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — \$45;

(c) For purposes of the fees charged under subsections (a) and (b) of this section:

(A) Surety is included in the casualty insurance line and marine and transportation insurance may be included in the property insurance line or the casualty insurance line; and

(B) The personal lines line is a subcategory of the casualty insurance line. Consequently, a person who holds a license that is endorsed to transact casualty insurance need not obtain a separate endorsement to transact personal lines insurance.

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(3) The following fees apply to application for licenses for insurance producers, adjusters and insurance consultants:

- (a) Resident insurance producer — \$30;
- (b) Nonresident insurance producer — \$30;
- (c) Adjuster — \$30;
- (d) Insurance consultant — \$30.

(4) The following fees apply to issuance of licenses for insurance producers, adjusters and insurance consultants:

- (a) Resident insurance producer — \$45;
- (b) Nonresident insurance producer — \$45;
- (c) Adjuster — \$45;
- (d) Insurance consultant — \$45;

(e) In addition, the actual cost of any criminal records check under 836-072-0010. The amount charged will not exceed the actual cost of acquiring and furnishing criminal offender information as authorized by ORS 181.534(9)(g).

(5) The examination fee under section (2) of this rule must be paid to the examination vendor. The application fee under section (3) of this rule and the license issuance fee under section (4) of this rule must be paid at the same time. There is no refund of the application and examination fees. Refund of the license issuance fee is governed by section (14) of this rule.

(6) The fees established in this section apply to the renewal of licenses for insurance producers, adjusters and insurance consultants. A license expires biennially in the month of the individual's birthday anniversary. The fees are as follows:

- (a) Resident insurance producer — \$45;
- (b) Nonresident insurance producer — \$45;
- (c) Adjuster — \$45;
- (d) Insurance consultant — \$45.

(7) The applicable fee under sections (3) and (4) of this rule shall be paid for each category of insurance business appearing on a license.

(8) The following fees apply to certificates of registration for legal expense organizations:

- (a) Application for a certificate of registration -- \$350;
- (b) Renewal of certificate of registration -- \$350. The fee under this subsection shall be paid annually.

(9) Annual registration of a foreign risk retention group -- \$350. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(10) Annual registration of a purchasing group -- \$100. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(11) The license for a rating organization -- \$180. The fee under this section shall be paid at the time of initial licensing and triennially thereafter.

(12) The fee for filing a statement by an acquiring party under ORS 732.521 for the purpose of acquiring a controlling interest in an insurer (a "Form A" filing as prescribed in OAR 836-027-0100) is \$50 per hour of Division staff time spent on reviewing the statement, with a minimum fee of \$5,000.

(13) The Fire Marshal shall pay \$50,000 each year for services provided by the Department in the collection of gross premium taxes on insurance covering the peril of fire under ORS 731.820.

(14) Fees paid as required under this rule are not refundable except as provided in this section. If the Director determines that an amount paid exceeds the amount legally due and payable to the Department and the amount of the overpayment is less than \$20, the Department shall refund the amount only upon receipt of a written request from the payer or the representative of the payer. A fee paid for a license under section (4) of this rule is refundable if the license applicant fails the examination or if the license is otherwise not issued to the applicant.

(15) The amendments to section (2)(a), (b) and (d) of this rule that were filed in ID 15-2002 with the Secretary of State on June 26, 2002 to become effective on July 1, 2002, are re-adopted with the operative date of July 1, 2002, and those same amendments to section (2)(a) and (b) of this rule are repealed effective July 1, 2003.

Stat. Auth.: ORS 181.534, 293.445, 731.244, 731.804 & 744.037  
Stats. Implemented: ORS 181.534, 731.804, 744.001, 744.002, 744.004, 744.007, 744.058, 744.062, 744.063, 744.064, 744.072, 744.528, 744.531, 744.535, 744.619 & 744.621  
Hist.: ID 6-1989(Temp), f. & cert. ef. 7-3-89; ID 14-1989, f. 12-12-89, cert. ef. 1-1-90; ID 21-1990, f. & cert. ef. 12-18-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 8-1991, f. & cert. ef. 10-21-91; ID 7-1993, f. & cert. ef. 9-3-93; ID 16-1997, f. 11-25-97, cert. ef. 1-1-98; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 14-2000, f. 12-27-00, cert. ef. 1-1-01; ID 13-2001, f. 11-16-01, cert. ef. 1-1-02; ID 15-2002, f. 6-26-02, cert. ef. 7-1-02; ID 4-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-19-03; ID 8-2003, f. 12-12-03, cert. ef. 12-19-03; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 11-2007(Temp), f. & cert. ef. 12-11-07 thru 6-1-08; ID 7-2008, f. 5-20-08, cert. ef. 6-2-08; ID 2-2010, f. 1-8-10, cert. ef. 2-1-10; ID 23-2010, f. 12-30-10, cert. ef. 1-1-11

## 836-071-0110

### Fingerprints

All fingerprints furnished to the Director by an applicant for a license shall be forwarded to the Identification Division, Oregon State Police for processing and search. If the Department and an examination administrator agree by contract that the examination administrator will perform the duties of obtaining fingerprints of applicants and submitting the fingerprints for Oregon or nationwide criminal history checks, an applicant shall submit the fingerprint card according to the requirements and instructions of the examination administrator.

Stat. Auth.: ORS 181.534, 705.135 & 731.244  
Stats. Implemented: ORS 181.534, 705.141, 744.001 & 744.059  
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 23-2010, f. 12-30-10, cert. ef. 1-1-11

## 836-071-0118

### Requirements That Must Be Completed Prior to Submitting Licensing Application to Director

Before submitting an application for a license to the Director, the applicant must complete the following steps in the application process:

- (1) Completion of all pre-examination training and experience requirements under OAR 836-071-0180;
- (2) Submission of fingerprints under OAR 836-071-0119;
- (3) Satisfactory passage of a licensing examination under OAR 836-071-120 and 836-071-0127; and
- (4) Completion of a criminal history check as set forth in OAR 836-072-0001.

Stat. Auth.: ORS 731.244, 731.804, 744.001, 744.003, 744.058, 744.535, 744.619 & 744.621  
Stats. Implemented: ORS 744.001, 744.003, 744.058, 744.535, 744.619 & 744.621  
Hist.: ID 23-2010, f. 12-30-10, cert. ef. 1-1-11

## 836-071-0120

### Examination Procedure

(1) To take an examination, an applicant must register with the examination administrator in advance of the examination.

(2) The administrator of the examination may require photographic identification of the applicant at the examination site.

(3) To be admitted to the examination site, an applicant must submit to the examination administrator either of the following as proof of satisfactory completion of required training:

(a) A signed certificate of insurance pre-examination training taken at a school registered under OAR 836-071-0190. The signed certificate must include the applicant's name, the classes of insurance for which training was received, the school name, the date on which the training was completed and the signature of a person authorized by the school to sign such certificates; or

(b) Proof of completion of the required pre-examination insurance training at an accredited college or university.

Stat. Auth.: ORS 731.244, 731.804, 744.001, 744.003, 744.058, 744.535, 744.619 & 744.621  
Stats. Implemented: ORS 744.001, 744.003, 744.058, 744.535, 744.619 & 744.621  
Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 9-2002, f. & cert. ef. 3-18-02; ID 23-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Insurer Provision of Commercial Loss Runs to Policyholders.

**Adm. Order No.:** ID 24-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 3-1-11

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 836-080-0800, 836-080-0805, 836-080-0810

**Subject:** In order to provide proposals or bind commercial property, commercial liability including umbrella or excess policies, workers' compensation, and commercial automobile insurance, most property and casualty insurers require the prospective insured to provide official documentation from their prior insurer regarding reported losses on all reported claims ("loss runs"). These rules require certain property and casualty insurers or their appointed producers of record to provide loss runs on a timely basis to current and prior commercial policyholders, upon the request of the policyholder.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-080-0800

### Definitions

As used in OAR 836-080-0800 to 836-080-0810, "loss runs" means information about a current or prior commercial policyholder's reported losses, including paid amounts on all reported claims. Such losses shall be



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valued as of the insurer's most current valuation date, but not more than 90 days prior to the date of the request for loss runs.

Stat. Auth.: ORS 731.244  
Stats. Implemented: ORS 746.160 & 746.240  
Hist.: ID 24-2010, f. 12-30-10, cert. ef. 3-1-11

## 836-080-0805

### Statutory Authority, Purpose, and Applicability

(1) OAR 836-080-0800 to 836-080-0810 are adopted by the Director of the Department of Consumer and Business Services pursuant to the Director's general rulemaking authority in ORS 731.244.

(2) The purpose of OAR 836-080-0800 to 836-080-0810 is to require certain property and casualty insurers or their appointed producers of record to provide loss runs on a timely basis to current and prior commercial policyholders, upon request by the policyholder to the insurer or its appointed producer of record.

(3)(a) Except as provided in subsection (b) of this section, OAR 836-080-0800 to 836-080-0810 apply with respect to all commercial property, commercial liability including umbrella or excess policies, and commercial automobile insurance except title and surety insurance.

(b) OAR 836-080-0810(2) applies only to workers' compensation insurance.

Stat. Auth.: ORS 731.244  
Stats. Implemented: ORS 746.160 & 746.240  
Hist.: ID 24-2010, f. 12-30-10, cert. ef. 3-1-11

## 836-080-0810

### Provision of Commercial Loss Runs

(1) Property and casualty insurers or their appointed producers of record shall make loss runs available to current and prior commercial policyholders within 15 calendar days upon request by the policyholder to the insurer or its appointed producer of record. The insurer shall provide five years of loss runs, or, if the commercial policyholder has been insured with that insurer for less than five years, for the entire period the policyholder has been insured with that insurer.

(2) Loss runs related to workers' compensation insurance shall not include confidential worker medical and vocational claim records pursuant to ORS 656.360 and 656.362.

(3) Violation of this rule is an unfair trade practice for the purpose of ORS 746.240.

Stat. Auth.: ORS 731.244  
Stats. Implemented: ORS 746.160 & 746.240  
Hist.: ID 24-2010, f. 12-30-10, cert. ef. 3-1-11

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**Department of Energy**  
**Chapter 330**

**Rule Caption:** Modifies the eligibility criteria for residential alternative energy devices and calculation of net costs.

**Adm. Order No.:** DOE 16-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 12-22-10

**Notice Publication Date:** 12-1-2010

**Rules Adopted:** 330-070-0019

**Rules Amended:** 330-070-0010, 330-070-0013, 330-070-0014, 330-070-0020, 330-070-0021, 330-070-0022, 330-070-0024, 330-070-0025, 330-070-0026, 330-070-0027, 330-070-0045, 330-070-0055, 330-070-0059, 330-070-0060, 330-070-0062, 330-070-0063, 330-070-0064, 330-070-0070, 330-070-0073, 330-070-0089, 330-070-0091, 330-070-0097

**Rules Repealed:** 330-070-0010(T), 330-070-0013(T), 330-070-0019(T), 330-070-0022(T)

**Subject:** The rule amendments are for changes to the Residential Energy Tax Credit (RETC) rules. The rules are modified to change the definitions to include energy purchase agreements, installed output, and third party financing; redefine net costs and eligible alternative vehicles. The rule amendments modify the criteria for determining the amount of credit and system certification requirements; and extend the time for technician tax credit certification from an annual to a three-year cycle, increase the standard for total solar resource fraction, and increase the eligibility requirements for appliances.

**Rules Coordinator:** Kathy Stuttaford—(503) 373-2127

## 330-070-0010

### Purpose

(1) The department will grant or deny tax credits in accordance with ORS 469.160 through 469.180 which allow tax credits for Alternative Energy Devices (AEDs).

(2) These rules establish the criteria and standards for issuance of tax credits for AEDs. None of these rules replace any building code requirements.

(3) All decisions made by the department regarding AED eligibility, issuance of tax-credit technician certification, complaints regarding performance of tax-credit certified technician, revocation of technician tax-credit certification and other matters relating to the administration of this program after the effective date of these rules will be made consistent with the criteria and standards contained in these rules.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-1990; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0013

### Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 70 the following definitions apply unless the context requires otherwise:

(1) "AED" – Alternative Energy Device.

(2) "AED Agreement" – A contractual agreement between a homeowner and a third party financing entity, where the homeowner agrees to purchase energy generated by an AED or make a lease payment for equipment that was installed under a third party financing model.

(3) "Active Solar Heating" – A solar system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun's energy to a dwelling or part of a dwelling.

(4) "AHRI" – Air-Conditioning, Heating, and Refrigeration Institute.

(5) "Alternative Energy Device" (AED) – A device or system that reduces the amount of conventional energy used by a dwelling. AEDs include, but are not limited to, systems that collect and use solar energy; ground source heat pump systems; energy-efficient appliances, energy-efficient heating, ventilating and air conditioning systems; premium efficiency biomass combustion devices, fuel cell systems; alternative fuel vehicles and related alternative fuel devices or wind devices that supply, offset or supplement electricity used for a dwelling or that supply electricity to a utility.

(6) "Alternative Fuel" – Electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director.

(7) "Alternative Fuel Vehicle" – An alternative fuel vehicle, equipment necessary to convert a vehicle to use an alternative fuel, or a fueling system necessary to operate an alternative fuel vehicle.

(8) "Annual Fuel Utilization Efficiency" (AFUE) – The energy output divided by the energy input, calculated on an annual basis and including part load and cycling effects. AFUE ratings shall be determined using the U.S. Department of Energy test procedures (10 CFR Part 430) and listings in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Directory of Certified Furnace and Boiler Efficiency Ratings.

(9) "Applicant" – A person who applies for a residential alternative energy device tax credit under this section, which may include:

(a) A person who files an Oregon tax return and applies for a residential alternative energy device tax credit under this section, or

(b) An Oregon Investor Owned Utility (IOU) as defined in ORS 757.005 or its subsidiaries and affiliated interests as defined in 757.015 that is designated by an applicant under OAR 330-070-0013(7)(a) to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of that designated applicant.

(10) "ARI" – Air Conditioning and Refrigeration Institute.

(11) "ASHRAE" – American Society of Heating, Refrigerating and Air Conditioning Engineers.

(12) "AWEA" – American Wind Energy Association.

(13) "Btu" – British Thermal Unit.

(14) "CEF" – Energy Factor for Combined Systems: A non-dimensional descriptor of efficiency for combined space and water heating systems during operation in the water-heating mode only. This part of the three-part rating (which also includes space heating efficiency and

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combined efficiency) takes into account the standby losses from the storage tank, if any. A higher energy factor denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(15) "Coefficient of Performance" (COP) – The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(16) "Combined Annual Fuel Utilization Efficiency" (CAFUE) – The effective efficiency of the combined appliance in performing the function of space heating. A descriptor of efficiency for combined space and water heating systems during operation in the space heating mode only. This part of the three-part rating (which also includes water heating efficiency and combined efficiency) does not count standby losses from the storage tank, if any. A higher AFUE denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124-1991 test method.

(17) "Consumer Disclosure" – A department approved form completed by the TCCT and provided to the buyer of AEDs, except for energy-efficient appliances and alternative fuel devices, including estimated energy savings of the AED, required conservation items, required maintenance, and freeze protection information.

(18) "Domestic Water Heating" – The heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(19) "Ductless Mini-split Heat Pump" – An air-source heat pump consisting of an outdoor unit connected directly to one or more indoor units where the refrigerant is condensed and conditioned air is delivered directly to the room or zone of a home rather than through a central air handler.

(20) "Dwelling" – means real or personal property inhabited as a principal or secondary residence. "Dwelling" includes, but is not limited to, a single-family residence and an individual unit within multiple unit residential housing.

(a) Principal residence is the dwelling owned by the applicant who on the date of the application has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property, and who inhabits the dwelling for no fewer than 14 days in a calendar year.

(b) Secondary residence is a vacation or other dwelling owned by the applicant that is not the applicant's principal residence.

(c) A dwelling does not include a motor home or recreational vehicle as defined in ORS 446.003.

(21) "Electric Load" – Appliance and lighting exclusive of any water or space heating use.

(22) "Energy Efficiency Ratio" (EER) – EER is calculated by dividing the cooling capacity in Btu per hour (Btu/hr) by the power input in watts at any given set of rating conditions, expressed in Btu/hr per watt.

(23) "Energy-Efficient Appliance" – A clothes washer, clothes dryer, water heater, refrigerator, dishwasher, space conditioning system, solar electric alternating current (AC) module, or any other major household appliance that has been certified by the department to have premium energy efficiency characteristics.

(24) "Energy Factor" (EF) – Energy Factor is the ratio of useful energy output from the water heater to the total amount of energy delivered to the water heater. EF is a metric used to compare relative efficiencies of water heaters. The higher the EF is, the more efficient the water heater. EF is determined by the DOE test procedure, Code of Federal Regulations, Title 10, Section 430.

(25) "Energy Yield Chart" – Chart approved by the department showing first year energy yield of an AED.

(26) "Energy Recovery Ventilator" (ERV) – A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream that is also capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating at the lowest fan speed.

(27) "EUI (FURNACE)" – The Energy Use Index for a furnace, used to determine its electric efficiency, and calculated by the following formula, with inputs derived from the appropriate values in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment:  $3.412 \times \text{EAE} / (3.412 \times \text{EAE} + 1,000 \times \text{EF}) \leq 2.0$  percent.

(28) "EUI (HERV)" – The Energy Use Index for an HRV or ERV, used to determine its electric efficiency, and calculated by dividing a model's power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed

for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(29) "FERC" – Federal Energy Regulatory Commission.

(30) "First Year Energy Yield" – Usable energy produced under average conditions by an AED in its first year of operation. Expressed in kWh, usable energy is the gross energy contribution minus any parasitic energy used to operate the system.

(31) "Fuel Cell Stack" – The portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(32) "Fuel Cell System" – A system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy.

(33) "Ground Source Heat Pump" – A heating, ventilating and air-conditioning system, also known as a ground source heat pump, earth-coupled heat pump, geothermal heat pump or ground loop AED, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth.

(34) "Heat Recovery Ventilator" (HRV) – A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream.

(35) "Heating Season Performance Factor" (HSPF) – The total heating output of a heat pump during its normal annual usage period for heating divided by the total electric power input in watt-hours during the same period. HSPF is measured according to test procedures defined by AHRI in its Standard 210/240 as well as ASHRAE Standard 116 and the DOE Test Procedure in 10 CFR, Part 430, Appendix M (ARI, 2003).

(36) "HUD" – U.S. Department of Housing and Urban Development.

(37) "Hybrid Vehicle" – An alternative fuel vehicle that draws propulsion energy from on-board sources of stored energy that include both an internal combustion or heat engine and a rechargeable energy storage system.

(38) "Hydronic Space Heating System" – A system that uses hot or warm water to deliver heat from a boiler or water heater to the living spaces in a home.

(39) "Installed Output" – The rated capacity of a photovoltaic system measured in average alternating current watts for the purpose of determining the tax credit. Installed output equals 0.7 multiplied by the rated direct current capacity as measured at standard test conditions.

(40) "IREC" – Interstate Renewable Energy Council.

(41) "kWh" – Kilowatt-hour; 1 kWh = 3413 BTUs for purposes of department calculations.

(42) "Latent Recovery Moisture Transfer" (LRMT) – In an HRV or ERV, moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is transferred.

(43) "MCFC" – Molten carbonate fuel cell.

(44) "Modified Energy Factor" (MEF) – The non-dimensional efficiency rating for clothes washers. This measure, unlike the EF, takes into account the moisture removed from the wash load in the spin cycle, thereby changing energy use in the drying cycle. A higher MEF denotes a more efficient clothes washer.

(45) "MM" – Million (M = 1000, MxM = 1000 x 1000 = 1,000,000).

(46) "Net Cost" – The applicant's cost for the design, acquisition, construction, installation, permitting and inspection of an AED. Net cost may include the value of federal tax credits or utility incentives. Net cost does not include service contracts, rebates, or refunds.

(47) "Net Generation" – The gross kWh produced minus internal losses and parasitic loads. The net generation includes both the amount of generation available to serve dwelling loads and to provide to a utility.

(48) "OG" – Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory.

(49) "Owner-Built" – An AED that is assembled and installed on an owner's property and with an owner's labor only.

(50) "Parasitic Power" – The electrical energy the system uses to operate.

(51) "Passive" – A solar AED that relies on heated liquid or air rising to collect, store and move heat without mechanical devices.

(52) "Passive Solar Space Heating" – A system or building design that collects and stores solar energy received directly through south facing win-

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dows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun's energy using only convection, radiation and conduction of energy.

(53) "Pass-Through Amount" – The amount required to be passed through to an eligible AED owner in exchange for the right to claim the tax credit. The pass-through amount shall be determined periodically by the Director.

(54) "Pass-Through Provider" – An individual or business that pays the pass-through amount to an applicant and receives the tax credit in place of the applicant.

(55) "Pass-Through Verification" – A determination based on information collected by the department that the approved pass-through amount has been provided, that the applicant has relinquished his or her claim to a tax credit and has assigned the credit to the pass-through provider.

(56) "Peak Power Ratio" – The maximum power available from the electric motor of a hybrid vehicle providing propulsion energy when powered by the rechargeable energy storage system, divided by the total of such maximum power and the SAE net power of the internal combustion or heat engine.

(57) "Performance Checked Duct System" – A forced air duct system that has been tested for duct leakage by a tax credit certified technician using the department's approved testing procedures, and that has been repaired or constructed for premium efficiency using the department's approved materials to reduce duct air leakage. For purposes of the tax credit, performance checked duct systems are considered energy-efficient appliances.

(58) "Performance Checked Heat Pump or Air Conditioner" – A heat pump or air conditioner that has been tested and repaired or serviced for premium efficiency by a tax credit certified technician using department approved procedures to assure that refrigerant charge and system air flow are within ranges recommended by the equipment manufacturer. For purposes of the tax credit, performance tested heat pumps and air conditioners are considered energy-efficient appliances.

(59) "Premium Efficiency Biomass Combustion Device" – Any device that burns wood, compressed wood or other non-gaseous or non-liquid solid fuels of 100 percent organic origin for aesthetic or space-heating purposes.

(60) "PV System" – A complete solar electric power system capable of delivering power to either the main or sub-panel in a dwelling. Necessary components include solar electric modules, inverter, mounting system, and disconnection equipment.

(61) "Seasonal Energy Efficiency Ratio" (SEER) – A measure of the efficiency of a cooling system over the entire cooling season (cooling accomplished divided by power used), expressed in Btu/kWh.

(62) "Solar Attic Fan" – A device that uses photovoltaics to power a fan that pulls hot air out of an attic or roof space. Such a device may either be a complete, all-in-one unit or be comprised of a small photovoltaic panel and a DC powered attic fan designed to be run by photovoltaic panel.

(63) "Solar Domestic Water Heating System" – A configuration of solar collectors, pump, heat exchanger and storage tank designed to heat water. System types include forced circulation, integral collector storage, thermosyphon, and self-pumping. For the purpose of determining system yields, a configuration of components is considered a new system if changes occur in any of the following: type or size of collectors, heat exchanger type or effectiveness, size of storage tank, or system type.

(64) "Solar Electric AC Module" – A solar photovoltaic module coupled with a utility interactive inverter. The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(65) "SRCC" – Solar Rating and Certification Corporation.

(66) "Sensible Recovery Efficiency" (SRE) – In an HRV or ERV, the measurable (sensible) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(67) "Standard Test Conditions" (STC) – 25 degrees Celsius cell temperature and 1000 watts per square meter.

(68) "Sunchart" – A chart or form issued or approved by the department, and completed, signed and dated by tax-credit certified technician showing the plotted path of the sun and any objects, including both plant life and structures, that block the sun from an AED. The viewpoint must be from the center of the lower edge of the collector, and must depict whether any plant life is made up of evergreen or leafy trees. A lack of shading on the AED must be indicated in writing on the chart.

(69) "System Certification" – Certification that an AED as described in an application for tax credit meets all criteria for the tax credit.

(70) "System Owner" – A person who owns the AED.

(71) "Tax-Credit Certified Technician" (TCCT) – A technician who has been approved by the department to implement the tax credit program. A tax-credit certified technician is responsible for assuring that AEDs are installed in accordance with the department's rules and must verify system installation quality and performance.

(72) "Tax-Credit Listed Company" – A company that employs at least one tax-credit certified technician.

(73) "Third Party Financing Model" – A project financing model where an AED is installed at a dwelling but, financed and maintained by a third party financing entity.

(74) "Total Solar Resource Fraction" – The fraction of usable solar energy that is received by the solar panel/collector throughout the year, which accounts for impacts due to external shading, collector tilt and collector orientation.

(75) "Unheated Spaces" – Attics, garages, and any space with an average ambient temperature of 50 degrees Fahrenheit or below during the heating season.

(76) "Used Equipment" – Any product or any piece of equipment not under a current manufacturer's warranty or which has been acquired by a previous owner or user.

(77) "Wastewater Heat Recovery Device" – A device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling's hot water supply system.

(78) "Water Factor" (WF) – The measure of water efficiency in clothes washers, measured in gallons per cubic foot of tub capacity, per cycle (gal/ft<sup>3</sup>/cycle).

(79) "Wind AED" – A qualifying wind energy conversion system that uses wind to produce mechanical or electrical power or energy, including turbines, towers and their associated components needed to form a complete system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10

### 330-070-0014

#### Pass-Through Eligibility

(1) Any person or business that purchases the approved tax credit from the AED system owner is eligible to claim the tax credit associated with that system in place of the AED system owner. Any person or business that purchases the approved tax credit from the AED system owner who owns or constructs an eligible alternative fuel station is entitled to claim the tax credit associated with that device in place of the system owner or contractor.

(2) In accordance with ORS 469.170 (9) the department is establishing the following rates to be used in calculating the pass through amount:

(a) For tax credits greater than \$1,500 when the pass-through partner is a business, the pass through amount is 80 percent of the tax credit amount.

(b) For tax credits greater than \$1,500 when the pass-through partner is a resident, the pass through amount is 86 percent of the tax credit amount.

(c) For tax credits less than \$1,500 the pass-through amount is 95 percent of the tax credit amount.

(3) In addition to other required information, verification information for tax credits obtained by pass-through providers shall include verification that the approved pass-through amount has been provided, and acknowledgement that the person originally eligible to receive a tax credit has relinquished his or her claim to the credit and has assigned the credit to the pass through provider.

Stat. Auth.: ORS 469.040, 469.160 - 180 & 469.710 - 720

Stats. Implemented: ORS 469.040, 469.160 - 180 & 469.710 - 720

Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10



# ADMINISTRATIVE RULES

## 330-070-0019

### Net Cost

(1) Notwithstanding the definition in OAR 330-070-0013(46), an applicant who installed eligible AEDs on or after August 1, 2010 and prior to January 1, 2011, other than those under contract on or before August 13, 2010 and installed prior to January 1, 2011, must determine "net cost" by calculating the amount the applicant paid for design, acquisition, building and installation of the AED, including permit and inspection fees. The net cost must include the value of federal tax credits and utility incentives. Net cost does not include service contracts, rebates, or refunds.

(2) An applicant:

(a) With an eligible AED installed prior to August 1, 2010 must clearly indicate on the application that the date of installation completion was prior to August 1, 2010; or

(b) With an eligible AED installed on or after August 1, 2010 and prior to December 31, 2010, who have a signed contract dated on or before August 13, 2010, must:

(A) Have provided a copy of the contract for the installation of an eligible AED to the department no later than 5:00 p.m. on Friday, August 27, 2010;

(B) Indicate on the application that the project was completed on or before December 31, 2010; and

(C) Provide the department evidence of the completed installation in the form of a copy of the approved final inspection, dated on or before December 31, 2010, as issued by the local jurisdiction.

(3) The department may grant an additional 15 days for project completion upon the written request of the applicant for good cause shown. The applicant must request the additional time in writing and explain the extenuating circumstances as to why the installation was not completed on or before December 31, 2010. Any project granted the additional time must be completed no later than Friday, January 14, 2011.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented: ORS 469.160.160 - 469.180

Hist.: DOE 10-2010(Temp), f. & cert. ef. 7-30-10 thru 1-24-11; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0020

### Eligibility

(1) To qualify for a credit, a person must:

(a) Have an income tax liability in Oregon; and

(b) Purchase an AED, complete construction and installation if applicable, and obtain a certification in accordance with OAR 330-070-0010 through 330-070-0097; and

(c) Be the owner or contract buyer of an Oregon dwelling served by the AED, or be a tenant of the dwelling owner; and

(A) Use the dwelling as a primary or secondary residence; or

(B) Rent or lease the dwelling to a tenant who uses the dwelling or dwellings as a principal or secondary residence.

(2) If the basis for the credit is the installation of an energy-efficient appliance, the credit shall be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence.

(3) If the basis for the credit is a fueling station necessary to operate an alternative fuel vehicle, unless the certificate is transferred, the company that constructs the dwelling that incorporates the fueling station or who installs the fueling station in the dwelling may claim the credit. If the alternative energy device is an alternative fuel vehicle or related equipment, the credit must be claimed by the system owner.

(4) Any person that pays the present value of the tax credit for a qualified alternative energy device to the person who originally purchases the device shall be entitled to claim the credit in place of the original credit owner.

(5) For a qualified vehicle owned by a lessor during the period of first use of a new vehicle, the lessor may pass-through the right to claim the credit to the lessee exercising the first new use.

(6) Notwithstanding (1)(b), a person may qualify for a credit of a third party financed AED by meeting the following additional requirements:

(a) Installations must include a minimum 10 year AED agreement or lease agreement.

(b) All equipment must be covered by a full service maintenance agreement provided by a third party financing entity for the entire length of the AED agreement or lease agreement.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert.

ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0021

### Eligible Devices

(1) To earn a tax credit, an AED must:

(a) Be a complete system. The system must be able to collect, store, convert, monitor, and distribute energy to the dwelling it serves. Additions to existing AED systems, except for pool, spa, or hot tub systems, are eligible when those additions increase the energy production capacity and the kWh saved by the system;

(b) Be a system that is built, installed, and operated in accordance with ORS 469.160 through 469.180;

(c) Be a system with manufacturers' warranties against defects in products and materials;

(d) Be a system that complies with general and specific standards in these rules as they apply to AED systems and be one of the following:

(A) A system that uses solar energy;

(B) A ground source heat pump ;

(C) A renewable energy system that heats or cools space, heats water, or makes electricity;

(D) An energy-efficient appliance including a wastewater heat recovery device;

(E) An alternative fuel device; vehicles licensed and registered for first new use on Oregon roadways and used vehicles being modified for first new use of a qualifying alternative fuel device are eligible for the tax credit.

(F) A fuel cell system;

(G) A heat pump water heater;

(H) A premium efficiency biomass combustion device;

(I) A ductless mini-split heat pump;;

(J) A gas Furnace;

(K) A boiler;

(L) A heat and Energy Recovery Ventilator; or

(M) An air Source Heat Pump.

(2) The following devices are not eligible for an AED tax credit:

(a) Standard efficiency furnaces;

(b) Standard backup heating systems;

(c) Wood stoves or wood furnaces, or any part of a heating system that burns wood except a qualifying premium efficiency biomass combustion device;

(d) Heat pump water heaters that are part of a geothermal heat pump space heating system;

(e) Structures that cover or enclose a swimming pool and are not attached to the dwelling;

(f) Swimming pools and hot tubs used to store heat;

(g) Photovoltaic systems installed on recreational vehicles;

(h) Additions to existing spa and hot tub systems;

(i) Above ground, un-insulated swimming pools, spas and hot tubs;

(j) Conversions of systems from one type to another. An example is a conversion of a draindown solar hot water system to a drainback solar hot water system;

(k) Used equipment;

(l) Repairs and maintenance of systems having received prior certification for an AED tax credit;

(m) Water source heat pump: A system that uses surface or subsurface water in a single pass without recirculation (open loop);

(n) Hydro systems;

(o) Wind systems that are used to heat or cool buildings, or to heat domestic, swimming pool or hot tub water; and

(p) Renewable energy systems that received certification under the Business Energy Tax Credit program as Homebuilder Installed Renewable Energy Facilities or as part of a High Performance Home.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0022

### Amount of Tax Credit

(1) The amount of the AED tax credit is based on the first-year energy yield of an eligible AED. The energy yield basis for a solar tax credit may be adjusted by the department to account for less than optimal solar access.

# ADMINISTRATIVE RULES

(2) The amount of the AED tax credit shall not exceed the lesser of:

(a) \$1,500 or the first-year energy yield of the AED in kWh multiplied by 60 cents for AEDs used for solar or geothermal space heating, cooling, electrical energy production or domestic water heating for tax years beginning on or after January 1, 1998. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation. Only one tax credit for ground source heat pump systems will be issued per year per residence.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed must be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to maximum credit amounts set in subsections (a) through (c) of this section.

(c) For each alternative fuel device, the credit allowed is 25 percent of the eligible cost of the alternative fuel device, not to exceed \$750 for devices placed in service on or after January 1, 1998. Individual credit may be claimed for both an alternative fuel vehicle and an alternative fuel fueling system.

(A) Eligible cost is the difference in the cost between a conventional fueled vehicle of similar size with similar features and the cost of an alternative fuel vehicle and its charging or fueling systems.

(i) Conventional fuel vehicles manufactured by the same manufacturer with the same seating capacity and/or cab cubic volume or weight difference that are less than 20 percent, may be used to define eligible costs, provided that other features (upholstery, audio, suspension, body appointment) are similar.

(ii) Low-speed vehicles, as defined under ORS 801.331 (2009 Oregon Vehicle Code) and alternative fuel vehicles capable of using E-85 and gasoline (flex-fuel vehicles) are not eligible for a tax credit.

(d) For fuel cell systems placed in service on or after January 1, 2007, one tax credit may be issued per year per residence based on the first-year energy yield of the AED in kWh multiplied by 60 cents, not to exceed \$6,000 and not to exceed 50 percent of the cost of the system. The maximum credit claimed per year will not exceed \$1,500.

(e) For photovoltaic systems installed on or after November 4, 2005, one \$6,000 tax credit per year per residence for four years (\$1,500 per year) not to exceed 50 percent of the cost of the system as defined in OAR 330-070-0022(4).

(f) For wind AEDs installed on or after January 1, 2007, one tax credit may be issued per year per residence based on the first-year energy yield of the AED in kWh multiplied by \$2.00, not to exceed \$6,000 and not to exceed 50 percent of the cost of the system. The maximum credit claimed per year will not exceed \$1,500.

(3) For an energy-efficient appliance, the credit allowed under this section shall equal:

(a) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved. The total for each appliance is not to exceed 25 percent of the cost of the appliance.

(b) \$50 per 6,000 Btu/hr of rated capacity, up to \$400 or 25 percent of the cost, whichever is less, if the energy-efficient appliance is a very high efficiency air source ductless heat pump.

(4) For photovoltaic systems:

(a) Installed on or after November 4, 2005 and prior to January 1, 2011, the credit allowed under this section shall equal \$3 per watt of the installed capacity measure in watts of direct current at industry standard test conditions.

(b) Installed on or after January 1, 2011, the credit allowed under this section shall equal \$3 per watt of the installed output.

(c) A maximum of one credit valued at \$6,000 shall be issued per residence per year for the year in which it was installed in annual increments up to \$1,500 over a four-year period. The total credit shall not exceed 50 percent of the cost of the system. All photovoltaic systems installed at a dwelling within a 5 year period shall be considered a single device.

(5) For premium efficiency biomass combustion devices, the credit allowed under this section shall be up to \$300 or 25 percent of the cost of the device, whichever is less, based upon the efficiency and the first year energy yield of the AED in kilowatt hours multiplied by 40 cents as determined by the department.

(6) The amount of the tax credit must not exceed the net cost of the AED to the applicant. The sum of any rebates or cash payments, including public purpose organization or federal grants or credits and the residential energy tax credit may not exceed costs.

(7) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0060 through 330-070-0097, as those rules apply;

(b) Be the net cost of acquiring the system.

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have net cost prorated. Net cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) The department may find an AED to be too large for a dwelling. In such case net cost must be prorated. Net cost must be based on the largest useful size of an AED for the dwelling. The department must determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and an addition may not exceed \$1,500 per year.

(8) For purposes of the tax credit, the net eligible cost of the AED is only those costs necessary for the system to yield energy savings and must not include:

(a) Unpaid labor including the applicant's labor;

(b) Operating and maintenance costs;

(c) Land costs;

(d) Legal and court costs;

(e) Patent search fees;

(f) Fees for use permits or variances;

(g) Loan interest;

(h) Amounts from vendors of an AED that reduce its cost. These include rebates, discounts and refunds;

(i) Service contracts;

(j) Cost of moving a used AED from one site to another;

(k) Cost of repair or resale of a system;

(l) Any part of the purchase price which is optional, such as an extended warranty; and

(m) Delivery fees.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0024

### Year Credit Claimed

(1) The tax credit must be claimed pursuant to ORS 316.116.

(2) The tax credit may not exceed a person's tax liability. Unused credit may be carried forward for a maximum of 5 years as allowed under ORS 316.116.

(3) Proof of purchase must be a contract or invoices dated in the year for which the applicant is claiming the credit.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0025

### Application for System Certification

(1) Applicants for a tax credit must obtain a system certification from the department.

(2) Applications for a system certification must be made in a form developed by the department:

(a) All applications must include a statement that the system and technician or owner-builder will meet all federal, state and local requirements;

(b) All applications must include the purchaser's social security number for use as an identification number in maintaining internal records. The purchaser's social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) All applications must state:

(A) The net cost of the AED;

(B) The location of the AED;

(C) Estimated first-year energy yield of the AED provided by the technician or from the department's energy yield chart, if any; and

(D) That the purchaser has received an operating manual for the AED, except that no operating manual is required for sunspaces or direct gain space heating systems.

(d) All applications must state that the technician agrees to make any changes required by the department for the system to comply with ORS 469.160 through 469.180;

## ADMINISTRATIVE RULES

(e) All applications must be signed by the purchaser and technician, if any, or, a form of electronic signature acceptable to the department shall be provided; and

(f) A technician or applicant must not give the department false or misleading information about an AED.

(3) System certification applications for solar water heating AEDs must contain:

- (a) All the data required in section (2) and must also include:
- (b) The number of collectors;
- (c) The manufacturer and/or supplier;
- (d) The collector dimensions and/or the net area of the collectors;
- (e) The amount of heat storage;
- (f) The system type;
- (g) Declaration of SRCC certification status or equivalence as determined by the department;

- (h) A description of the freeze protection for the system;
- (i) A description of the over-heat protection for the system;
- (j) The system model;
- (k) Orientation and tilt of the collector;
- (l) A sunchart for the collector location;

(m) A Consumer Disclosure signed by the applicant and technician or supplier, if any;

(n) A statement that the purchaser has received a copy of consumer information supplied by the department; and

(o) Other data the department requires to determine eligibility.

(4) System certification applications for active solar space heating

AEDs must contain:

- (a) All the data required in sections (2) and (3) of this rule;
- (b) A heat loss estimate for the home;
- (c) The type and amount of thermal storage;
- (d) A sunchart for the collector location; and
- (e) Other data the department requires to determine eligibility.

(5) System certification applications for passive solar space heating

AEDs must contain:

- (a) All the data required in section (2) above and must also contain:
- (a) A copy of the building permit plans;
- (b) A copy of the window specifications used;
- (c) The type and amount of thermal storage;
- (d) A sunchart taken at the center of the solar glazing; and
- (e) Other data the department requires to determine eligibility.

(6) System certification applications for photovoltaic AEDs must contain:

- (a) The data required in section 2 and must also contain:
- (b) The number of modules;
- (c) The brand name of the module(s);
- (d) The module(s) area;
- (e) The rated DC output in watts of the module(s) under Standard Test

Conditions (STC);

(f) A description of the storage provided if storage is a part of the system;

tem;

- (g) Storage brand and model;
- (h) Storage capacity in kWh;
- (i) The brand name of the inverter if an inverter is part of the system;
- (j) The capacity of the inverter;
- (k) Orientation and tilt of the array;
- (l) A sunchart of the array location;
- (m) Other data the department requires to determine eligibility; and
- (n) Must submit copy of final inspection after system has been permitted by applicant's local jurisdiction.

(7) System certification applications for ground source heat pumps must contain:

- (a) All the data required in section (2) of this rule and must also contain:
- (b) For all systems connected to a well, data on the well including:
  - (A) Depth;
  - (B) Diameter (cased);
  - (C) Temperature;
  - (D) Static water level below grade;
  - (E) A copy of the well driller's log, if available; and
  - (F) Other data the department requires to determine eligibility.
- (c) For systems connected to a heat pump:
  - (A) Brand name and model number of the heat pump;
  - (B) Rated output at the entering water temperature;
  - (C) Estimated system COP rated by ARI under Standard 325 -85 at an entering water temperature of 50 degrees Fahrenheit; and

(D) Any other data the department requires to determine eligibility.

(d) For ground loop heat pump systems:

(A) All the information in subsection (7)(b) of this rule; and

(B) Brand name, rated output, estimated COP;

(C) Length and depth of the loop;

(D) Materials and spacing used;

(E) Type of heat transfer fluid; and

(F) Other data the department requires to determine eligibility.

(8) System certification applications for energy-efficient appliances must contain:

(a) All the data required in section (2) of this rule and must also contain;

(d) The dealer's business location;

(e) The brand name, make, model number, capacity and/or size of the appliance;

(f) A signed copy of the sales agreement, which will include all of the following:

(A) Verification of purchaser's name and address; and

(B) Verification of model of appliance; and

(C) Verification of actual price paid for appliance.

(g) Certification of new equipment warranty; and

(h) Other data the department requires to determine eligibility.

(9) System certification applications for alternative fuel devices must contain:

(a) Taxpayer's name;

(b) Taxpayer i.d. or social security number;

(c) State of Oregon vehicle registration number;

(d) Installation location by street address;

(e) The name of the licensed and bonded company employing the technician;

(f) The company's business location;

(g) The brand name, make, model number, or component list of the

AFD;

(h) A signed copy of the sales agreement, which will include all of the following:

(A) Verification of purchaser's name and address; and

(B) Verification of model of, or components used for AFD; and

(C) Verification of actual price paid for the AFD.

(i) Certification of new equipment warranty;

(j) An optional letter attached to the application declaring that the applicant designates an Investor Owned Utility (IOU) or other qualifying entity as the eligible recipient of the credit certificate on behalf of the project owner applicant that includes:

(A) Name, address, contact person, phone number, facsimile number of the IOU or designated qualifying party; and

(B) Signature, or form of electronic signature acceptable to the department, of an authorized representative of the IOU or other designated qualifying party stating willingness to accept the tax credit certificate; and

(k) Other data the department requires to determine eligibility.

(10) System certification applications for fuel cells must provide information regarding:

(a) The data required in section (2) and must also contain:

(b) The rated fuel cell stack peak capacity, in kW;

(c) The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);

(d) Whether or not the system is grid connected;

(e) The fuel used by the system;

(f) The type of fuel stack (PEM, PAFC, SOFC, etc.);

(g) An estimate of the average load, in kW, expected to be placed on the system;

(h) The thermal energy production rate, in Btu/hour, at peak capacity and at the average load specified in (10)(f) above;

(i) Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and

(j) Other data the department requires to determine eligibility.

(11) System certification applications for premium efficiency biomass combustion devices must provide information regarding:

(a) The manufacturer, model, capacity, serial number; and

(b) The device characteristics defined as catalytic, non-catalytic, or pellet stove or boiler; and

(c) Vendor name and address; and

(d) Price paid for the device, any parts or installation; and



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(e) A signed certification from the applicant verifying that any wood burning device which is being replaced has been rendered unusable and will be retired permanently from service; and

(f) The efficiency and grams of smoke per hour published in the List of EPA Certified Wood Stoves; or

(g) The efficiency and grams of smoke per hour published in a third-party list approved by the Director in the year in which the device was purchased; or

(h) A certificate of performance including the grams of smoke per hour and efficiency for the specific manufacturer and model of wood burning device from a currently US EPA certified woodstove testing laboratory.

(i) Other data the department required to determine eligibility.

(12) A system certification may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

(13) For a third party financed system, the application must provide copies of an energy purchase or lease agreement and full service maintenance agreement

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1988(Temp), f. & cert. ef. 1-13-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0026

### Technician Tax Credit Certification

(1) Technicians may on a voluntary basis apply for the department's tax-credit certification for a technology listed in subsection (2) of this section. Certification is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to department rules, and verify system installation quality and performance. Technician certifications are valid for three years and must be renewed to remain in effect.

(2) A tax-credit certified technician applies only to the following products:

- (a) Solar water heating systems;
- (b) Ground source heat pumps (geothermal);
- (c) Photovoltaic systems;
- (d) Performance-tested ducts; and
- (e) Air source heat pumps/air conditioning systems.

(3) The tax-credit certified technician's qualification is based on the following:

- (a) Knowledge and understanding of the tax credit program requirements and expectations;
  - (b) Ability to provide systems that are designed and installed consistent with the manufacturer's warranty; and
  - (c) Employment by a company with a Construction Contractors Board (CCB) license.
- (d) Those who do not maintain these competencies are subject to revocation of the certification.

(4) A Tax-credit certified technician qualification entitles a technician to:

(a) Inform the AED system owner that he or she has attended the department's periodic training classes and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.

(b) Verify that installation of tax-credit qualified equipment and systems meet department standards for performance and longevity.

(5) Tax-credit certified technician status requires that the technicians must follow department requirements including:

(a) Duct and air-source heat pump/air conditioning technicians must have a current or valid certification with Performance Tested Comfort System (PTCS) or Proctor Engineering CheckMe! Programs.

(b) Solar technicians must show a valid or current (North American Board of Certified Energy Practitioners-NABCEP certification or Limited Renewable Energy Technician (LRT) license for solar electric, Solar Thermal License (STL) for solar thermal, or pass the department's competency testing with a score of 70 or above for the technology. On or after May 4, 2009, new applicants for tax credit certified solar technicians must show NABCEP photovoltaic (PV) certification or or successfully passed the NABCEP PV Entry-Level Exam or Limited Renewable Energy Technician (LRT) license or Solar Thermal License (STL) or other certification approved by the Director to be a tax credit certified solar technician. On and after May 4, 2010 all tax credit certified solar technicians must show proof of appropriate NABCEP or LRT or STL certification or other

certification approved by the Director to maintain their tax credit solar certification with the department.

(c) First-time geothermal technician applicants must show proof of successful completion of International Ground Source Heat Pump Association training (IGSHPA) or IGSHPA certified manufacturer's installer training program or other training approved by the Director.

(d) Solar and geothermal tax credit certified technician applicants must participate in periodic department tax-credit training at least once every three years unless otherwise specified in department rule..

(e) Technicians must verify the AED owner has user manual for equipment/system.

(f) Technicians must provide the AED owner with a completed application and a copy of the final itemized dated invoice for the system that is marked "inspected and paid for." Verify owner has a written full warranty for the system that lasts no less than 24 months after the system is installed.

(g) Technicians must maintain tax-credit certification status by completing the following technology-specific requirements during the previous three years:

(A) For solar technology:

(i) Submit and approve two (2) Residential or Business Energy Tax Credit applications for systems in technology in which technician is certified and complete four (4) hours of related technical continuing education; or

(ii) Submit and approve one (1) Residential or Business Energy tax Credit application for system in technology in which technician is certified and complete six (6) hours of related technical continuing education; or

(iii) Complete eight (8) hours of related technical education.

(B) For air source heat pumps/air conditioning: Must have a current or valid certification with PTCS or Proctor Engineering CheckMe! Programs.

(C) For performance tested duct systems: Must have a current or valid certification with PTCS.

(D) For ground-source heat pumps: Have submitted and approved a minimum of one (1) tax credit application or proof of having completed at least two hours of relevant installer training, community college HVAC course, or other training approved by the Director.

(6) Tax credits for installation of air source heat pumps/air conditioning systems, performance-tested ducts, geothermal systems, solar electric and solar thermal systems must be verified by a department tax-credit certified technician.

(7) A tax-credit certified technician must notify the department within 30 days if changes are made in any of the information in the certification application.

(8) The department will list companies employing duct and air-source heat pump/air conditioning technicians. A listed company must:

(a) Employ a tax credit certified technician who has a valid or current certification with PTCS or Proctor Engineering CheckMe! Programs.

(b) Apply in writing and renew their listing on an annual basis.

(c) Have a minimum of two key administrative staff participate in the department's periodic update training.

(d) Tax credit certified technicians that do not meet the minimum requirements are suspended for one-year after which they may reapply.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0027

### Application Review Process

(1) The department must review applications for AED tax credit approval. AEDs must comply with OAR 330-070-0010 through 330-070-0097. Specific rules for each type of AED are provided in OAR 330-070-0060 through 330-070-0097.

(2) The department will return applications that are not complete and will identify the additional information needed.

(3) The department must act on a complete application within 60 days after it is received. The department may require more details within 30 days of receipt of an initial application. In some cases another 60-day review period may be needed. If so, the department will explain to the applicant why more time is needed:

(a) If the department fails to meet these deadlines, the application for tax credit is considered approved;

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(b) If the department requests additional data, the review period will be extended until required data is received;

(c) During review, the department may ask for proof that the AED complies with OAR 330-070-0010 through 330-070-0097. The department may also ask for changes to allow the AED and application to comply with these rules.

(4) To obtain the information needed to evaluate an application or to verify eligibility and first year energy yield, the department may, with the owner's consent, inspect an installed AED:

(a) The department may deny a system certification or request Department of Revenue (DOR) to initiate proceedings for the forfeiture of a tax credit if an owner refuses to allow the department to inspect the AED;

(b) The department may require corrections to make the AED or tax credit application comply with OAR 330-070-0010 through 330-070-0097 to be made within 30 days; and

(c) If such changes are not made within this time limit, the department may reject the application.

(d) The department may use the results of utility inspections in lieu of its own inspection.

(5) The department may reject any application if the AED does not comply with ORS 469.160 through 469.180 and OAR 330-070-0010 through 330-070-0097. The department will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include a written explanation of the basis for the determination.

(6) If the department rejects an application for system certification or approves a certification for lesser cost than claimed by the applicant, an applicant may appeal the rejection. The appeal must be filed within 60 days of the mailing of the rejection notice by the department, in accordance with ORS 183.310 through 183.500.

(7) If the department receives an application(s) for a qualifying alternative fuel device accompanied by a letter from the applicant designating an IOU or other qualifying party as the recipient of the tax credit certificate, then the department may aggregate such applications and issue a single tax credit certificate to designated qualifying party quarterly for applications for projects to be completed in that calendar year.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 2-1987, f. & ef. 5-13-87; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0045

### Enforcement

(1) Applicant's actions that are cause for revocation of a residential alternate energy tax credit:

(a) A system certification may be revoked pursuant to ORS 469.180 if the Director finds that:

(A) The applicant obtained the system certification as a result of misrepresentation;

(B) The AED has not been installed or operated in substantial compliance with the plans, specifications or procedures specified in the application or certificate, such as:

(i) Failure to follow applicable standards;

(ii) Failure to comply with required codes or obtain required permits or inspections;

(iii) Return of the AED to the seller or installer for a refund;

(iv) Sale or removal of the device so that it no longer operates on the property of the applicant; or

(C) The applicant refuses to allow the department to inspect the AED after a reasonable written request by the department. A reasonable request must allow applicant to choose a day within three weeks of the request from the department.

(b) Following revocation, the applicant must forfeit the tax credit, and the department of Revenue must proceed to collect any taxes not paid by the taxpayer because of this credit.

(2) A technician's tax credit certification may be revoked pursuant to ORS 469.180 if the Director finds that:

(a) The system or technician tax-credit certification was obtained by fraud or misrepresentation by the technician. The Director may find that fraud or misrepresentation occurred if false statements were made regarding the technician's licenses held, products or warranties carried by the tax-credit certified technician's employing company, the company's range of product cost, personnel employed in the business, or any other item in the

application for technician tax-credit certification as defined in OAR 330-070-0026.

(b) The technician's performance regarding sales or installation of the alternative energy device for which the technician is issued a tax credit certificate under ORS 469.170 does not meet industry standards. The Director may find that the technician's performance does not meet industry standards under the following conditions:

(A) The technician's employing company is not registered with the Construction Contractors Board or does not carry the required level of insurance, licensure or bonding; or

(B) The technician and/or employing company fails to obtain the required state, federal or local permits required to install the AED as defined in OAR 330-070-0040; or

(C) The technician fails to install the AED system in compliance with standards adopted under OAR 330-070-0060 through 330-070-0097; or

(D) The technician fails to install the AED system to comply with manufacturers' published specifications; or

(E) The technician and employing company fail to honor contract provisions when there is no legitimate excuse for nonperformance of the obligation; or

(F) The technician and employing company fail to honor a warranty which they are contractually obligated to perform; and

(G) The technician and/or employing company fail to make corrections to remedy failure to comply with paragraphs (A) through (G) of this subsection requested by the department within 30 days of written notification from the department of the problem, unless a time extension is granted by the department.

(H) A tax credit for an AED sold or installed under the technician tax-credit certification is ordered revoked under subsection (2)(a) of this rule; or

(I) New information indicates that the AEDs installed under the technician tax-credit certification and his or her employing company does not meet eligibility requirements.

(c) The technician or employing company has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device. The Director may find that the technician or employing company has misrepresented the tax credit program or the AED under the following conditions:

(A) The technician or employing company has provided false or misleading information to the customer regarding the availability of the tax credit, amount and nature of the tax credit, procedures for tax credit application, eligibility standards for credit, or any other misleading information about the program implemented under ORS 469.160 through 469.180; or

(B) The technician or employing company has misrepresented the nature of the performance of the AED or claimed savings in excess of those on a yield chart without providing accurate calculations to the customer and to the department to substantiate the yield. For geothermal heat pumps, the technician or employing company has claimed savings higher than other units of similar efficiency; or

(C) The technician or employing company has misrepresented the cost of a system. For example, the technician or employing company omits costs in the contract for features necessary for basic installation and/or operation of the system and/or costs to comply with the AED eligibility under ORS 469.160 through 469.180; or

(D) The technician or employing company has misrepresented a competitor's product or service; and

(E) The technician or employing company fails to make corrections requested in writing to the department to remedy violations of (A)-(D) of this subsection within 30 days, unless more time is allowed by the department; or

(F) The technician or employing company fails to remedy the construction and/or warranty claim as directed by order of the Construction Contractors Board.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0055

### Consumer Information

(1) A tax credit certified technician must inform the owner in simple terms:

(a) How to tell if the device is running right. Who to call if it is not;

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(b) How to tell if the freeze protection is in effect. Who to call if it is not;

- (c) What maintenance is needed, annually and long term;
- (d) Who will honor warranties; and
- (e) The conditions of the warranties including but not limited to how to start and keep warranties in force.

(2) A tax-credit certified technician or employing company must provide all AED purchasers with a copy of materials listed in section (1) of this rule prior to sale of the system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0059

### Solar Pool and Spa AEDs

(1) Installations must be of professional quality, be installed according to manufacturer's instructions; and comply with all applicable state, county, or local codes and regulations.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

- (a) Clear instructions on how to monitor the system performance;
- (b) Description and recommended frequency of homeowner maintenance;
- (c) Diagram of the system noting location of valves and monitoring devices; and

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs;

(3) Pool heating system designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Any building insulation disturbed due to the system installation must be restored to previous condition;

(d) Pool collector materials must come with a minimum 10-year manufacturer's full warranty (to ensure that equipment designed for temporary installation is not used).

(e) System must have a method to show that it is operating correctly. This equipment must be a permanent part of the system, not require any special tools, and be in an easily accessible location.

(f) Collectors must be mounted in a manner to enable seasonal drainage by gravity for proper freeze protection.

(g) Pool collectors must be equal to not less than 40 percent of the pool surface area if equipped with swimming pool blanket or not less than 60 percent if no pool blanket is present.

(4) Spa heating system designs and installations must comply with the following additional requirements:

(a) System design must be approved by the department. Approval is based on complete system design documentation and calculation of annual energy savings.

(b) Controls must be capable of maintaining safe spa temperatures.

(c) Spa or hot tub must be insulated with not less than R-15 perimeter and bottom insulation and have a cover rated to not less than R-5.

(5) The department will provide technicians with a means of estimating annual energy savings for a pool heating system. Spa heating system performance will be determined on a case-by-case basis. For the purposes of determining the tax credit, the annual energy savings will be reduced by

(a) 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent for systems installed prior to January 1, 2011.

(b) 100 percent if the total solar resource fraction for the site is less than 75 percent for systems installed on or after January 1, 2011.

(6) The costs listed in subsection (7)(a) through (h) of this rule do not include all eligible costs. Other costs will qualify if justified to the department's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(7) Eligible costs include:

- (a) The cost of solar collectors;

- (b) The cost of thermal storage devices;
- (c) The cost of monitors, meters and controls;
- (d) The cost of photovoltaic devices used to supply electricity to parts of the system;

(e) Installation charges;

(f) Fees paid for design or building;

(g) The cost of swimming pool blankets, if they are installed with a solar pool heating system; and

(h) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(8) The addition of more energy producing capacity to an existing solar pool heating system may be eligible for an AED tax credit if:

(a) The system addition increases first year energy yield; and

(b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through 330-070-0097.

(9) The department will calculate first year energy yield of a system addition by subtracting the estimated savings of the original AED from the increased first year energy yield with the addition.

(a) The department will not recalculate the original AED's estimated energy savings, even if the AED produces less than estimated.

(b) Any AED which received an AED tax credit in a prior year shall be assumed to remain in place, for purposes of calculating a tax credit for a system addition.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0060

### Solar Domestic Water Heating AEDs

(1) Installations must be of professional quality, comply with all applicable state, county, or local codes and regulations and be verified by a tax-credit certified solar technician.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must be plainly mounted/displayed on or near the solar storage or backup water-heating tank. These instructions must at a minimum include:

(a) Clear instructions on how to determine if the system is functioning properly;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices;

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs; and

(e) How to protect the system from overheating due to stagnation during periods when the system is not in use during the summer months.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions and be rated for design condition temperatures;

(d) Any building insulation disturbed due to the system installation must be restored to previous condition;

(e) For systems using pressurized anti-freeze fluids, a pressure gauge must be installed to indicate pressure in the system; and

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing codes. A minimum number of fittings must be used in the attic, and the fittings shall be copper or brass.

(g) Pipe materials (e.g. copper, PEX, polybutylene) must be capable of handling the temperature ranges that they will be exposed to (e.g. freezing or collector stagnation).

(4) Freeze protection must be provided for systems where the heat transfer fluid may freeze. The freeze protection method must follow these rules:

(a) The method must be clearly stated in the owner's manual.

(b) The method must work in the absence of utility electric power.



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(c) Systems using tanks, piping, pumps and other components containing water in unheated spaces must be adequately protected from freezing.

(d) Recirculation is not an acceptable freeze protection measure, unless the collector used is a heat pipe type.

(e) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(f) Thermosyphon systems may not connect power to the electric element in roof-mounted tanks as a freeze protection or backup measure.

(5) The annual energy requirement for domestic water heating must be reduced by setting the water heater thermostat to 120 degrees F.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer in line between solar storage and backup tank.

(b) For an active system this must be a flow meter in the supply line to the collectors and a thermometer on the outlet port of the solar storage tank.

(c) Equipment meeting this requirement must:

(A) Be a permanent part of the system;

(B) Not require any special tools or equipment to monitor; and

(C) Be in an accessible location.

(7) The costs listed in subsection (8)(a) through (j) of this rule do not include all eligible costs. Other costs will qualify if justified to the department's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit.

(8) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges;

(g) Fees paid for design or building;

(h) The cost of swimming pool blankets, if they are installed with a solar pool heating system;

(i) The cost of hot water conservation measures installed with a water heating AED; and

(j) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(9) The department will provide a table of estimated annual energy savings or "yield chart" for most OG-300 systems common to Oregon and R&D systems. Annual energy savings will be based on the annual performance simulations provided by the SRCC modified for conditions required under state law. Yields must be developed for each of the three weather zones defined by ODOE and updated at least annually.

(a) OG-300 systems that meet the department's approval do not have to be on the yield chart if there has been no request by a tax-credit certified technician that they appear on the yield chart.

(b) For the purposes of determining the tax credit, the annual energy savings will be reduced by:

(A) 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent for systems completed prior to January 1, 2011.

(B) 100 percent if the total resource fraction is less than 75 percent for systems completed on or after January 1, 2011.

(10) All systems must meet the standards established by the SRCC OG-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

(a) Prior to January 1, 2011, temporary authorization will be granted to non-OG-300 systems under a special "Research & Development" status. The department will extend this temporary authorization for up to 12 systems of a specific design. The solar technician will need to submit a complete copy of the system design and operation documents provided to the consumer to the department for approval. The department shall determine that such system will perform well under the conditions it is designed for and will likely last in excess of 15 years without replacement of major components. Tax credit amounts under this status will be determined by the department based on 90 percent of the estimated annual energy output. On or after January 1, 2011, the temporary authorization provided in this section expires.

(b) Prior to January 1, 2011, temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status providing the system manufacturer is currently applying for OG-300 certification from SRCC. The department will extend an unlimited quantity of systems to be installed in a 12-month period, providing the department has reviewed a copy of the SRCC application and determined it to be reasonably likely to achieve OG-300 certification within the 12-month period.

(c) On or after January 1, 2011, temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status the system must comply with all local codes and the manufacturer must have submitted an application to the SRCC for OG-300 certification. The department must review and approve a copy of the SRCC application including the operations manual prior to the installation of the system.

(11) All technician tax-credit certified-installed systems must:

(a) Include an O&M manual which specifies installation instructions, operation instructions, maintenance plan, fluid quality, service and replacement parts, hazards, and warranty coverage;

(b) Provide clear labeling of on/off/bypass controls and safety issues;

(c) Have a means of indicating proper operation of the solar water heating system (flow indicators/meter or thermometers);

(d) Be installed to meet local building codes; and

(e) Have a tempering valve to prevent greater than 120 degree F. water downstream of the valve.

(12) Systems shall be installed with the OG-300 certification sticker located on the manual cover. The manual and any supporting documentation shall be placed in a waterproof, clear plastic bag located on or near the solar or domestic hot water heater.

(13) Owner-built and site-built domestic water heating systems are exempt from the testing requirements. The department will evaluate the system design and assign it a yield based on 50 percent of its estimated annual energy performance.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0062

### Passive Solar Space Heating AEDs

(1) Installations must be of professional quality and comply with all applicable state, county or local codes and regulations.

(2) The estimated first year energy yield must be the net usable energy produced under average environmental conditions in one year.

(3) Passive solar space heating systems must produce energy savings equal to not less than 20 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit. Such systems must:

(a) Have sufficient solar access, not jeopardized by future buildings or tree growth;

(b) Provide usable heat for the heated space;

(c) Provide adequate thermal storage for solar heat gained;

(d) Prevent overheating of the heated space that requires mechanical space cooling; and

(e) In addition, sunspaces must:

(A) Have no backup heating device; and

(B) Be able to be isolated from the heated space.

(4) Determination of annual performance shall be based on one of the following approved methods:

(a) Using the department's prescriptive passive solar heating path to achieve 20 percent savings.

(b) Annual hourly simulation using an approved energy modeling software (e.g. Energy-10).

(c) Monitored data from system before and after installation of AED.

(5) Solar device costs eligible for passive space heating systems include:

(a) The cost of mass or water walls for thermal storage;

(b) The cost of movable window insulation that is part of a passive system. It must tightly seal on all sides of the window. It must also have an R- value of at least three;

(c) The cost of south-facing windows, if the requirements of section (4) of this rule are met; and

# ADMINISTRATIVE RULES

- (d) The cost of passive heat distribution components.
- (6) The department will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0063

### Combined Active Solar Space and Domestic Water Heating AEDs

(1) Installations must be of professional quality, made to manufacturer's instructions, comply with all applicable state, county and local codes and regulations, and be verified by a tax-credit certified solar technician.

(2) Active solar space heating systems must produce energy savings equal to not less than 15 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit.

(3) The estimated first-year energy savings shall be based on the following:

(a) The house design prior to installation of the solar energy equipment, not a base code design or reference design.

(b) The total energy savings from both space heating and domestic hot water heating, with not less than 50 percent of the savings coming from solar heating.

(c) An annual solar utilization calculation method approved by the Director that accounts for the operating temperature of the energy storage and collector system and gives no credit for any insulation measures not directly associated with the solar AED.

(d) Typical residential occupancy setpoints and operating behavior. Savings will not be granted for consumer behavior options, with the exception of nighttime window insulation which will be evaluated at 50 percent of maximum effectiveness.

(4) Applicant must provide the following information:

(a) Complete system design documentation with component list and controls sequence;

(b) Annual estimated savings calculations; and

(c) Solar equipment specifications and performance test data.

(5) Solar device costs eligible for the tax credit for active space heating systems include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters, and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges; and

(g) Fees paid for design or building.

(6) The department will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0064

### Photovoltaic AEDs

(1) Installations must be professional quality, comply with all applicable Oregon codes and be verified by a tax-credit certified solar technician.

(2) A photovoltaic tax credit for a system installed on or after November 4, 2005, shall be limited to \$6,000 per PV system. The amount of the credit shall be based on \$3 per watt of installed output. The maximum tax credit given in a calendar year is \$1,500. If a system results in a tax credit larger than \$1,500, the remainder will be applied on to the subsequent year until either the \$6,000 limit or the total tax credit is provided.

(3) System size shall be determined by the sum of all the photovoltaic module DC wattage ratings under standard test conditions (STC).

(4) The minimum system size must be 200 Watts DC output under STC.

(5) Photovoltaic AED costs eligible for the tax credit include the cost of:

(a) Photovoltaic modules;

(b) Inverters;

(c) Storage systems and regulators;

(d) Monitors, meters, and controls;

(e) Wiring and framing materials;

(f) Trackers;

(g) Installation charges; and

(h) Permits and fees, including up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(6) For the purposes of determining the tax credit, the annual energy savings will be reduced by:

(a) 25 percent if the total solar resource fraction for the site is less than 75 percent and by 100 percent if the total solar resource fraction for the site is less than 50 percent for projects completed prior to January 1, 2011.

(b) 100 percent if the total solar resource fraction for the site is less than 75 percent for projects completed on or after January 1, 2011.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0070

### Ground-Source Heat Pump

(1) Only total systems will qualify for a tax credit. All systems must comply with OAR 330-070-0025 and 330-070-0040 and be of closed loop design and operation. See also OAR 330-070-0027.

(2) Systems must limit waste of the resource.

(3) Systems must not have adverse effects on:

(a) Other systems; and

(b) Water quality applying the standards of the Department of Environmental Quality.

(4) Systems must not create hazards such as:

(a) Steam or water vapor;

(b) Vapors or odors;

(c) Noise; and

(d) Hazardous wellhead design.

(5) System parts must have adequate:

(a) Structural strength;

(b) Resistance to weather and fire;

(c) Ease of upkeep; and

(d) Durability.

(6) No system will cause harmful physical effects on people or unwanted tastes or odors.

(7) Some heat transfer fluids need special handling. These include toxic, corrosive, and explosive fluids. Such fluids shall only be used when the system is designed to safely handle them.

(8) Under normal operation, any part of a system that may be touched by people must be cooler than 141 degrees F. If this cannot be done, any part that reaches more than 140 degrees F. must have warning labels. Each system must include a device to limit water for domestic use to 140 degrees F.

(9) Each system and nearby structures must be protected against pressures, vacuums and temperatures.

(10) Systems must fully protect drinking water as specified in the Oregon Plumbing Specialty Code.

(11) Systems must use storage tanks built by accepted methods. Each tank must be tested for leaks.

(12) Expansion and contraction due to changing heat levels must not cause undue strain or distortion.

(13) Systems that use heat transfer fluids that may freeze must have freeze protection.

(14) Systems must use accepted methods to guard against the known corrosion/scaling level of the water.

(15) Systems must also be designed for the least effect on groundwater.

(16) Ground loop systems must cover enough ground to meet total annual heating requirements, as required by manufacturers' recommended design standards. Ground loops used for cooling must restore soil moisture.

(17) Downhole heat exchangers (direct use geothermal systems) must include a summary report from Oregon Institute of Technology or other source approved by the Director which describes the system and indicates that it will deliver sufficient heat and the design meets current good practice guidelines. They will be reviewed on a case-by-case basis.

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(18) The system COP must be at least 3.3 for closed loop systems and 3.5 for direct expansion (DX) systems, including energy used by pumps. COP shall be determined by the following methods:

(a) For water source heat pumps, the COP must be determined in accordance with ARI Standard 325-85, at an entering water temperature of 50 degrees F.

(b) For water source or ground loop heat pumps using ambient surface water as an energy source and for solar assisted heat pumps, the COP must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

(19) All other types of ground source heat pumps must be reviewed on their COP.

(20) Bermed or earth covered buildings will not qualify for the geothermal tax credit.

(21) All ground source heat pumps must include setting the water heater thermostat to 120 degrees F as a hot water conservation measure.

(22) A ground source heat pump system may receive a supplemental tax credit amount, determined by the department, based on additional energy savings, if the duct system to which it is attached is tested and certified in accordance with the protocols specified in Section 330-070-0073(9)(a) through 330-070-0073(9)(g). This amount is in addition to the tax credit amount for the ground source heat pump system itself, and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the ground source system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, by the department by April 1st of the tax year following the tax year for which the credits are being claimed.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10

### 330-070-0073

#### Energy-Efficient Appliances and Alternative Fuel Devices

(1) Energy-efficient appliances must meet or exceed the following energy efficiency ratings, as measured in accordance with current United States Department of Energy (USDOE) test procedures where applicable, and be currently listed with the department as qualifying premium efficiency appliances. In the event that the same model number has more than one energy efficiency rating, one of which is non-qualifying, all units with that model number will be declared ineligible and removed from the department's qualifying list of premium efficiency appliances. Models declared ineligible due to multiple energy efficiency ratings may be reinstated upon demonstration by the manufacturer that the problem has been remedied, but not earlier than 12 months from the time of removal from the list.

(2) Where USDOE test procedures do not exist, the department will designate a nationally recognized test procedure that will apply instead.

(3) Clothes washers.

(a) For the purpose of this program, clothes washer efficiency performance is determined using the USDOE Appendix J1 test procedure for residential clothes washers in effect at the time the rules are adopted.

(b) Clothes washers purchased on or after:

(A) April 1, 2007 and prior to January 1, 2011 must have a minimum Modified Energy Factor (MEF) of 2.0 ft<sup>3</sup>/kWh/cycle and a maximum Water Factor (WF) of 6.4 gal/ ft<sup>3</sup>/cycle.

(B) January 1, 2011 must have a minimum Modified Energy Factor (MEF) of 2.2 ft<sup>3</sup>/kWh/cycle and a maximum Water Factor (WF) of 4.5 gal/ ft<sup>3</sup>/cycle.

(c) Equipment efficiency requirements are based on ENERGY STAR® listing or other third-party certified list approved by the department.

(4) Refrigerator-Freezers.

(a) Refrigerator-Freezers purchased:

(A) prior to January 1, 2011 must have at least 20 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers;

(B) on or after January 1, 2011 must have at least 30 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers.

(b) Must have a total net volume (sum of the fresh food compartment and freezer compartment volumes) of at least 12 cubic feet, but less than 31 cubic feet; and

(c) Must have a fully automatic defrost cycle.

(d) Equipment efficiency requirements are based on listing by ENERGY STAR® or other third-party certified list approved by the Director.

(5) Dishwashers.

(a) Dishwashers purchased on or after:

(A) January 1, 2008 and prior to January 1, 2011 must have an Energy Factor of 0.70 cycles/kWh or higher;

(B) January 1, 2011, standard dishwashers as defined by ENERGY STAR®, must have an Energy Factor of at least 0.75 cycles/kWh or higher; and compact dishwashers, as defined by ENERGY STAR®, must have an Energy Factor of at least 1.00 cycles/kWh or greater.

(b) Dishwashers must have tax credit eligibility based on an Energy Factor derived from the DOE Dishwasher Test Procedure effective September 28, 2003.

(c) Equipment efficiency requirements are based on by ENERGY STAR® listings or other third-party certified list approved by the Director.

(6) Water Heating Appliances.

(a) Water heater efficiency requirements:

(A) Equipment efficiency requirements for units of nominal 1-ton or less capacity are based on listing by ENERGY STAR® or California Energy Commission or on the USDOE Energy Factor, as derived from the USDOE Appendix E test procedure for residential water heating equipment in effect at the time the rules are adopted. Efficiency requirements for units larger than 1-ton in capacity and smaller than 6-tons in capacity, are based on the system COP at 47 degrees F outdoor air temperature or other rating point appropriate for the system deemed equivalent by the department.

(B) Electric units of nominal 1-ton or less shall have an Energy Factor not less than 1.0; units with capacity greater than 1-ton and less than 6-tons shall have a COP rating of not less than 2.5.

(C) Natural gas, propane, or oil-fired residential storage type water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have an Energy Factor of 0.80 or greater as tested with natural gas fuel.

(D) Whole-home gas fired instantaneous water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have:

(i) an Energy Factor of at least 0.80, a maximum firing rate of at least 140,000 Btu/hour and a minimum firing rate no higher than 24,000 Btu/hour if installed prior to January 1, 2011;

(ii) an Energy Factor of at least 0.82 or greater if installed on or after January 1, 2011.

(E) Equipment efficiency requirements are based on either the listing by ENERGY STAR®, the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), or other third-party certified list approved by the Director.

(b) Combined space/water-heating system efficiency must be based on the water heating Energy Factor for Combined Systems (CEF) as derived from the American National Standards Institute/American Society of Heating, Refrigerating, and Air Conditioning Engineers (ANSI/ASHRAE) 124-1991 test method. Water heaters that are part of a combined space and water heating system may not receive a tax credit for space heating efficiency as a boiler in addition to the tax credit as a water heating appliance.

(7) For Wastewater Heat Recovery Systems, field performance data submitted to and approved by the department must be the basis for tax credit qualification. The following rules also apply:

(a) The systems must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling's wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling's hot water supply system.

(8) Performance Checked Space Conditioning Duct Systems must meet the following requirements:

(a) All work must be done in accordance with Performance Tested Comfort Systems (PTCS) specifications, a regionally developed set of protocols with provisions for testing and sealing duct work that is maintained by the Regional Technical Forum (RTF), as adopted by the RTF and in effect at the time the work is performed.

(b) If the home serviced by the performance checked duct system is new, or the building envelope is being altered, the house must meet residential energy conservation requirements of the Oregon Structural



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Specialty Code or of the Oregon One and Two Family Dwelling Code in effect at the time the home is constructed or structurally altered.

(c) Duct leakage must be tested in accordance with Performance Tested Comfort Systems (PTCS) approved testing protocols.

(d) Testing to verify that these standards have been achieved must be conducted by technicians approved by the department.

(e) Measures eligible for the purpose of calculating a performance checked duct system tax credit include:

- (A) New construction.
  - (i) Duct sealing labor and materials;
  - (ii) Heating and cooling load calculations;
  - (iii) Duct system sizing and design calculations;
  - (iv) Labor and materials for installing multiple returns;
  - (v) Labor and materials for installing passive pressure relief grilles;
  - (vi) Duct testing; and
  - (vii) Labor and materials for bringing duct systems inside heated space.

- (B) New ducts in existing homes.
  - (i) Duct sealing labor and materials;
  - (ii) Heating and cooling load calculations;
  - (iii) Duct system sizing and design calculations;
  - (iv) Labor and materials for installing multiple returns;
  - (v) Labor and materials for installing passive pressure relief grilles;

and

- (vi) Duct testing.
- (C) Duct repair and sealing/existing ducts in existing homes.
  - (i) Duct sealing labor and materials;
  - (ii) Labor and materials for installing multiple returns;
  - (iii) Labor and materials for installing passive pressure relief grilles;

and

- (iv) Duct testing.
- (f) To apply for a performance checked duct tax credit, the following information must be submitted in a form approved by the department:

- (A) Application form;
- (B) Test results worksheet for "new construction," "new duct systems in existing homes," or "duct repair and sealing"/existing ducts in existing homes, as applicable; or inclusion of the PTCS identification number associated with the measure being submitted for tax credit on the application form.

(C) Copies of heating and cooling load calculations and/or duct sizing calculations, as applicable, shall be made available to the department upon request; and

- (D) Itemized invoice identifying measures detailed in (e).
- (g) The amount of the tax credit for performance checked duct systems must be 25 percent of the eligible costs detailed in (e), up to \$250.
- (9) Performance Checked Heat Pumps and Central Air Conditioners must meet the following standards:

(a) Systems must be tested and serviced as needed to confirm correct refrigerant charge and air flow by technicians certified by the department and by an approved Performance Tested Comfort System (PTCS) provider.

(b) Testing shall be in accordance with PTCS specifications, a regionally developed set of protocols with provisions for testing the operation of air-source heat pumps and air conditioners that are maintained by the Regional Technical Forum (RTF), as adopted by the RTF and in effect at the time the work is performed.

(c) To verify electronically commutated motor (ECM) installation results, the wattage of the existing fan motor and new ECM fan motor must be measured using a wattmeter or by clocking the revenue meter using the following procedure:

(A) Turn off all circuit breakers except the breaker to the AC/HP air handler.

(B) Turn on the air handler fan (cooling speed).

(C) At the meter, use a stopwatch, and for a period of at least 90 seconds, count the number of revolutions of the wheel. Record seconds and number of revolutions.

(D) Record meter data: kWh and multiplier if any.

(E) Calculate the watt draw of the fan:  $\text{Watts} = [\text{kWh} \times \text{number of revolutions} \times \text{multiplier} \times 3600] / \text{seconds}$ .

(d) Eligible measures must be confirmed by the system diagnostic tests using PTCS protocols in use at the time of measure installation. Duplicate tax credits may not be claimed.

(e) Measures eligible for the purpose of calculating a performance checked heat pump/air conditioner tax credit include:

- (A) System diagnostic tests;

(B) Adding or removing refrigerant when initial diagnostic tests indicate need for refrigerant adjustment and post repair tests indicate correct charge has been installed;

(C) Altering the duct system to improve air flow when initial diagnostic tests show low air flow and post repair tests show an air flow improvement of 10 percent or more;

(D) Cleaning the inside coil when initial diagnostic tests indicate low air flow and post repair tests show an air flow improvement of 10 percent or more;

(E) Replacing an existing inside fan motor with an electronically commutated motor (ECM) when initial diagnostic tests show low air flow and tests after ECM installation show an air flow improvement of 10 percent or more; and

(F) Control modifications necessary for the system to pass the diagnostic test.

(f) To apply for a performance checked heat pump/air conditioner tax credit, the following information must be submitted in a form approved by the department:

- (A) Application form;
- (B) Performance checked heat pump/AC diagnostics data entry form;
- (C) Pre and post repair system air flow measurements using approved methods listed in (b), if applicable;
- (D) Watt draw of existing fan motor and new ECM, if applicable; and
- (E) Itemized labor and materials cost information for applicable measures, testing, and repairs.

(g) The amount of the performance checked heat pump/AC tax credit must be 25 percent of the cost of testing and modifications to existing equipment, up to \$250.

(10) Alternative Fuel Vehicles must have equipment installed to make the vehicle capable of storing and utilizing an alternative fuel for vehicle propulsion. Equipment may consist of original equipment manufacturer components; or

(a) Components for natural gas powered vehicles that meet EPA1-A requirements current at the time these rules are adopted; or

(b) Components for hybrid vehicles must provide the hybrid vehicle with a combination of power between propulsion energy systems such that the peak power ratio of the vehicle is 0.10 or greater; or

(c) Other components as recognized by the department as necessary for alternative fuel use.

(d) Those applying for alternative fuel vehicle tax credits must acknowledge that they do not intend to transfer ownership of the vehicle to a non-Oregon resident for a period of one year.

(11) Alternative Fuel Fueling Systems must be installed to meet all state and local fire and life safety codes and be capable of re-fueling/recharging an alternative fuel vehicle within 14 hours. The following rules also apply:

(a) On-board charging systems that feed into the rechargeable energy storage system in a hybrid vehicle must be high-voltage systems of 100 Volts or higher that have an active regenerative braking system integrated into the recharging system of the hybrid vehicle; and

(b) The use of an on-board charging system on a hybrid vehicle must result in significant energy savings as determined by the Director.

(12) Energy Recovery Ventilators (ERVs) must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32°F when operating on the lowest fan speed;

(c) Have a maximum EUI (HERV) of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(d) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed; and

(C) 60 percent at -13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(13) Heat Recovery Ventilators must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

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(B) 60 percent at 32°F/0°C when operating at the highest fan speed; and

(C) 60 percent at -13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(14) Very High Efficiency Air Conditioning Systems must:

(a) Be a central, split-system designed and installed to operate in conjunction with the air handling unit or furnace of a home's heating system;

(b) Be tested and rated in accordance with the DOE test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and certified by, and listed in the directory of the Air Conditioning Heating and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI);

(d) Have a minimum EER rating at DOE standard test condition "A" conditions of 13.0; and

(e) Be installed in accordance with the protocols specified in section 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules.

(15) Very High Efficiency Air Source Heat Pump Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix M test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) that is in effect at the time these rules are adopted;

(b) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI);

(c) Have a minimum DOE Region IV HSPF rating of 9.0 or greater;

(d) Have a minimum EER rating at DOE's standard test condition "A" of at least 12.0; and

(e) Be installed in accordance with the protocols specified in section 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules.

(16) Very High Efficiency Warm Air Furnace Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating:

(A) of 0.90 (90 percent) for installations completed prior to January 1, 2009;

(B) of 0.92 (92 percent) for installations completed on or after January 1, 2009 and prior to January 1, 2011;

(C) of 0.94 (94 percent) for installations completed on or after January 1, 2011.

(c) Use ducted outdoor air for combustion; and

(d) Must be listed in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) directory of Certified Energy Rating in effect at the time these rules are adopted as an "e" "electrically efficient" furnace. The "e" electrically efficient designation applies to furnaces whose electricity consumption is 2 percent or less of the furnaces total energy use, according to the department's official test procedure, and is determined according to the following formula:  $(EAE \times 3.413) / [(EAE \times 3.413) + (EF \times 1,000)] \leq 2$  percent.

(17) Very High Efficiency Air Handlers must:

(a) Be installed as part of a hydronic space heating system; and

(b) Be equipped with an electronically commutated, permanent magnet variable speed DC (ECPM) motor.

(18) Very High Efficiency Hot Water Boiler Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating:

(A) of 0.88 (88 percent) for installations completed prior to January 1, 2009;

(B) of 0.92 (92 percent) and must include an outdoor temperature reset control for installations completed on or after January 1, 2009.

(19) Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace systems may receive a supplemental tax credit amount, determined by the department, based on additional energy savings if the duct system to which it is attached is tested and certified in accordance with the protocols specified in Section 330-070-0073(9)(a) through 330-070-0073(9)(g). This

amount is in addition to the tax credit amount for the Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace system itself, and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the air conditioning and/or heating system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, by the department by April 1st of the tax year following the tax year for which the credits are being claimed.

(20) Very High Efficiency Ductless Air Source Heat Pump Systems must:

(a) Include an inverter-driven variable speed compressor;

(b) Be listed in the Air Conditioning, Heating and Refrigeration Institute (AHRI) Directory of Certified Products.

(c) Deliver at least 50 percent of its ARI-certified rated capacity at 17°F outside temperature;

(d) Include no integrated electric resistance backup heat;

(e) Be sized and installed per manufacturer specifications; and

(f) Be installed by a technician trained by the equipment manufacturer within the last five years.

(21) Very Efficient Biomass Combustion Devices must be:

(a) Less than one quarter of a million British thermal units (Btu) per hour heat output, and

(b) Installed in an Oregon residential dwelling; and

(c) Installed with a dedicated outside combustion air intake; and

(d) Listed in the United States Department Environmental Protection Agency List of EPA Certified Wood Stoves or other third-party certified list approved by the Director with emissions of 4.5 grams of smoke per hour or less if it is designated in that list as a non-catalytic wood stove; or

(e) Listed in the List of EPA Certified Wood Stoves or other third-party certified list approved by the Director with emissions of 2.5 grams of smoke per hour or less if it is designated in that list as a catalytic wood or pellet stove; or

(f) Have a certificate of performance for the specific manufacturer and model of wood burning device from a currently US EPA certified wood-stove testing laboratory. The certificate must show emissions of 4.5 grams of smoke per hour or less if it is designated as a non-catalytic wood stove or emissions of 2.5 grams of smoke per hour or less if it is designated as a catalytic wood or pellet stove.

(22) Any other standards adopted by the department for energy-efficient appliances and alternative fuel devices, their components, and/or systems as determined by the Director.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0089

### Wind AEDs

(1) To qualify for a tax credit:

(a) A wind AED system manufacturer must provide monthly data of average energy produced (kWh) and average wind speed for one consecutive year for each model of system to demonstrate reliable operation of that model of equipment at a site with average annual wind speeds of at least 12 mph; OR The wind AED system model must be listed on the official list of Qualified Wind Generators published by the California Energy Commission or the New York State Energy Research and Development Authority (NYSERDA).

(b) A wind AED system application must include the nominal rated electric capacity, the power curve and energy production data as a function of the average annual wind speed.

(c) A wind system must have a minimum five-year manufacturer's warranty.

(2) The department reserves the right to deny eligibility for any wind AED for any reason including, but not limited to: poor generator performance, concerns about wind generation system design or quality of data presented; lack of manufacturing support for maintenance, warranties, etc., insufficient experience with generator, etc.

(3) Systems must be designed and located to reduce the potential for hazards and unpleasant living conditions. Systems must be designed and located taking into account:

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(a) The proximity of the system to buildings, power lines, antennae or other similar hazards;

(b) The effect of high winds on the system and on any building connected to the system by guy wires;

(c) Whether the system blocks fire lanes, obstructs dwelling access, or otherwise increases fire danger;

(d) Whether the operation of the system significantly increases background noise; and

(e) Whether connecting the system to other buildings by guy wires creates vibration and tension in other buildings.

(4) Materials used will assure that the wind AED has adequate:

(a) Strength;

(b) Resistance to wind, lightning, ice, moisture, corrosion and fire;

(c) Durability; and

(d) Low maintenance cost.

(5) The wind AED must withstand all natural forces it may be expected to experience.

(6) No part of a wind AED project must put toxic substances into the environment in amounts that will cause disease or harmful physical effects to humans, animals or plants.

(7) Wind AED parts must be serviceable without the need to trespass.

(8) Maximum Design Wind Speed: All parts of a Wind AED project must withstand the highest wind speed expected at its location. All parts must withstand this wind without damage. To meet this requirement, wind AEDs may be shut down during highest expected winds.

(9) Manual Shutdown: All wind AEDs must have a manual way to stop the rotor from turning. This method must work safely during high winds and routine service.

(10) Overspeed Control: Rotor overspeeds shall be prevented by the wind AED's design.

(11) Tower safety: All parts of a wind AED project shall meet accepted engineering standards. Tower design must include consideration of:

(a) Gravity load; and

(b) Peak thrust on the rotor, nacelle, tail and tower over the full wind speed operating range.

(12) Electric: All wind AED electrical parts must adhere to all standards and codes in force at the time they are installed.

(13) Lightning: Wind AEDs must withstand lightning strikes.

(14) The Director may waive part or all of section (1) of this rule if production of the wind AED model stopped prior to 1990, or it is an owner-built system or a mechanical wind AED.

(15) The first-year energy yield of wind AEDs must be at least 350 kWh.

(a) The first-year energy yield must be estimated using the measured or estimated wind resource data and the wind AED's power curve or energy production data.

(A) The provided wind data must cover at least a one-year period.

(B) Wind data may be used from:

(i) Three nearby wind monitoring stations;

(ii) The wind AED site itself;

(iii) In the event of less than one year's measurements at the wind AED site, the application shall include the months of on-site measurements and one year's worth of data from two nearby locations; or

(iv) A nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology.

(b) The department will use data supplied by the applicant to verify the first-year energy yield.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0091

### Eligible Costs for a Wind AED

(1) The costs listed in subsections (2)(a) through (m) of this rule do not include all eligible costs. Other costs will qualify if directly associated with the acquisition and installation of the AED. Only total working systems will qualify for a tax credit. All systems must comply with OAR 330-70-0021 and 330-070-0040.

(2) Eligible costs include:

(a) The cost of wind turbine generators;

(b) The cost of DC/AC converters, inverters and synchronous inverters;

(c) The cost of wind and system instruments and controls when part of a total wind AED;

(d) The cost of energy storage (batteries or other methods);

(e) The cost of tower, foundation and guys;

(f) Fees paid for design and building;

(g) Fee to install;

(h) The cost of electric meters, switches and electrical safety equipment;

(i) The cost of electric transformers and lines and supports;

(j) The cost of safety equipment;

(k) Up to \$500 of wind permitting cost;

(l) The cost of windmills; and

(m) The cost of pumps, linkage, pump heads, and vacuum chambers.

Stat. Auth.: ORS 469.160 - 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10

## 330-070-0097

### Electricity Producing AEDs

Generating AEDs linked with an electric utility must be installed in accordance with local utility interconnect guidelines and be UL listed and installed per the state electrical code.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10

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## Department of Environmental Quality Chapter 340

**Rule Caption:** Housekeeping and streamlining for DEQ-administered tax credits.

**Adm. Order No.:** DEQ 15-2010

**Filed with Sec. of State:** 12-20-2010

**Certified to be Effective:** 12-20-10

**Notice Publication Date:** 10-1-2010

**Rules Adopted:** 340-016-0088

**Rules Amended:** 340-016-0080, 340-016-0210

**Rules Repealed:** 340-016-0100, 340-016-0110, 340-016-0120, 340-016-0130, 340-016-0140, 340-016-0150

**Subject:** The Environmental Quality Commission:

- Adopted and amended Pollution Control Tax Credits rules to transfer certificate administration activities to DEQ;

- Repealed the Pollution Prevention Tax Credit pilot program rules. The statute authorized EQC to issue program certificates through December 31, 1999.

- Amended the Truck Engine Tax Credit to align the last date of certificate issuance to December 31, 2013 with 2009 amendments to chapter 618, Oregon Laws 2003 in a legislative note following ORS 315.356.

**Rules Coordinator:** Maggie Vandehey—(503) 229-6878

## 340-016-0080

### Certification

(1) The Preliminary Certificate. The Commission shall pre-certify the eligibility of a facility if the Commission determines the facility is eligible for a pollution control tax credit certificate as set forth in OAR 340-016-0060. The certificate shall be prima facie evidence that the facility is qualified for certification for tax relief under ORS 468.167. Preliminary certification shall not ensure that the facility constructed will receive certification under ORS 468.167 or tax relief under ORS 307.405 or 315.304.

(2) The Final Certificate. The Commission shall certify the actual cost of a pollution control facility as set forth in OAR 340-016-0070 and the portion of the cost properly allocable to pollution control as set forth in ORS 468.190 and OAR 340-016-0075 if the Department determines the facility is eligible for pollution control tax credit certification as set forth in 340-016-0060. The certificate:

(a) Shall bear a separate serial number for each such facility;

(b) May certify two or more facilities which constitute an operational unit under one certificate;

(c) Is effective for purposes of tax relief according to the provisions of ORS 307.405 or ORS 315.304;

(d) Shall be granted:

(A) For 10 consecutive years beginning with tax year of the person taking the tax credit; or



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(B) For 20 consecutive years for corporations organized under ORS Chapters 62 or 65 that utilize ad valorem tax-relief. The portion of the facility allocable to pollution control shall be exempt from ad valorem taxation.

(e) Shall be limited to that portion of the eligible and allocable facility costs, as set forth in OAR 340-016-0070 and OAR 340-016-0075 representing the taxpayer's investment in the pollution control facility.

(f) May certify portions of a facility qualifying under ORS 468.165(1)(c) separately under this section if portions of the facility are owned by more than one person. The actual cost certified for all portions of a facility separately certified under this subsection shall not exceed the total cost of the facility that would have been certified under one certificate. The provisions of ORS 307.405 or ORS 315.304, whichever is applicable, shall apply to any sale, exchange or other disposition of a certified portion of a facility.

(g) May certify a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to pollution control, material recovery or recycling than was claimed in the application for certification.

(3) Revocation. The Department may order the revocation of the final tax credit certification as set forth in ORS 468.185. The Department shall notify the Department of Revenue and the county assessor of the county in which the facility is located as soon as the order of revocation or reinstatement under this section has become final.

(a) Cause for Revocation. Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Department may order revocation of a tax credit for:

(A) Fraud or Misrepresentation, if the certificate was obtained by fraud or misrepresentation. All prior tax relief provided to the certificate holder by virtue of such certificate shall be forfeited. The Department of Revenue or the proper county officers shall proceed to collect taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405 and 315.304; or

(B) Failure to Operate Facility, if the certificate holder has failed substantially to operate the facility for the purpose of, and to the extent necessary to meet the specifications of the certificate; or in compliance with the applicable Department or Commission statutes, rules, orders or permit conditions. The certificate holder shall be denied any further relief provided under ORS 307.405 or 315.304 in connection with such facility from and after the date that the order of revocation becomes final.

(b) Suspended Revocation. The Department may suspend the revocation of a certificate when operation of a facility ceases if the certificate holder indicates in writing that the facility will be returned to operation within five years time. In the event that the facility is not returned to operation as indicated, the Department shall revoke the certificate.

(c) Impact on Adjacent Facilities. The Department may revoke tax credits held for any facility or piece of equipment which is for the purpose of preventing, controlling, reducing, or eliminating pollution to the same media and which is at a location adjacent to the non-complying facility.

(d) Reinstatement. The Department may reinstate any revoked tax credit certification if the Department finds the non-complying facility has been brought into compliance. The tax credit certification shall be reinstated for the remaining period of the tax credit, less the period beginning on the date the Department revokes the certificate and ending on the date the Department reinstates the certificate.

(4) Sale, Exchange or Disposition of Facility. The certificate holder shall provide the Department with written notice upon any sale, exchange or other disposition of the certified pollution control facility. Upon request, the taxpayer shall provide a copy of the contract or other evidence of disposition of the property to the Department of Environmental Quality. Upon sale or exchange of the facility, the certificate holder may request that the Department transfer a tax credit from one holder to another, the Department shall reissue the certificate to the new holder, and report the transfer of the certificate to the Department of Revenue as set forth in ORS 307.405 and 315.304.

Stat. Auth.: ORS 468.150

Stats. Implemented: ORS 468.150 - 468.190

Hist.: DEQ 5-1998, f. 4-24-98, cert. ef. 5-1-98; DEQ 15-2010, f. & cert. ef. 12-20-10

## 340-016-0088

### Subdelegation of Certificate Administration

(1) The Environmental Quality Commission subdelegates authority to the Director of the Department of Environmental Quality to:

(a) Transfer the tax credit certificate upon sale or exchange of the certified facility under OAR 340-016-0080(4) if:

(A) The new facility owner submits a complete Tax Credit Transfer Request form provided by the Department; and

(B) The Department determines the new facility owner continues to operate the facility according to the conditions of certification under ORS 468.170.

(b) Revoke a certificate under OAR 340-016-0080(3).

(2) The Director may subdelegate the authority provided in section (1) of this rule to the Administrator of the Management Services Division.

Stat. Auth.: ORS 468.020, ORS 468.150

Stats. Implemented: ORS 468.150 - 468.190

Hist.: DEQ 15-2010, f. & cert. ef. 12-20-10

## 340-016-0210

### Purpose

This rule establishes Department of Environmental Quality policies and procedures for issuing tax credits to Oregon taxpayers that purchase qualifying truck engines in accordance with Oregon Law 2003, Chapter 618, Sections 28 through 32. These rules apply only to purchases made on or after September 27, 2007, and certificates issued on or before December 31, 2013.

Stat. Auth.: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356

Stats. Implemented: OL 2003, Sec. 28-32, reprinted in a note following ORS 315.356

Hist.: DEQ 8-2004, f. & cert. ef. 9-17-04; DEQ 9-2008, f. & cert. ef. 7-11-08; DEQ 15-2010, f. & cert. ef. 12-20-10

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**Rule Caption:** Title V operating permit fee increases authorized in statute.

**Adm. Order No.:** DEQ 16-2010

**Filed with Sec. of State:** 12-20-2010

**Certified to be Effective:** 12-20-10

**Notice Publication Date:** 10-1-2010

**Rules Amended:** 340-220-0030, 340-220-0040, 340-220-0050

**Subject:** The rules:

- Increase Title V fees for 2010 and 2011 and do not require retroactive fee collection;
- Adopt a fee increase for 2009 identical to the August 2009 Environmental Quality Commission temporary rule amendments that allowed the Department of Environmental Quality to invoice Title V permittees on the normal 2009 billing schedule; and
- The fees in the rules reflect a technical correction required by statute.

Federal and state laws require permit fees fund Oregon's entire Title V program. The statute increases the annual base fee beginning in 2010 and gives the Commission authority to adjust all of the fee categories by the annual change in the consumer price index.

Title V permitting helps ensure that permit holders comply with state and federal emissions standards. Revenue from the fees will fund the program through 2012.

**Rules Coordinator:** Maggie Vandehey—(503) 229-6878

## 340-220-0030

### Annual Base Fee

(1) The Department will assess an annual base fee of \$ 5,421 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2009 to November 14, 2010.

(2) The Department will assess an annual base fee of \$ 7,183 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2010 to November 14, 2011.

(3) The Department will assess an annual base fee of \$ 7,289 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2011 to November 14, 2012, and for each annual period thereafter.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; Administrative correction 3-18-10; DEQ 16-2010, f. & cert. ef. 12-20-10

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## 340-220-0040

### Emission Fee

(1) The Department will assess an emission fee of \$ 54.21 per ton of each regulated pollutant emitted during calendar year 2008 to each source subject to the Oregon Title V Operating Permit Program.

(2) The Department will assess an emission fee of \$ 54.31 per ton of each regulated pollutant emitted during calendar year 2009 to each source subject to the Oregon Title V Operating Permit Program.

(3) The Department will assess an emission fee of \$ 55.11 per ton of each regulated pollutant emitted during calendar year 2010 and for each calendar year thereafter to each source subject to the Oregon Title V Operating Permit Program.

(4) The emission fee will be applied to emissions based on the elections made according to OAR 340-220-0090.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; Administrative correction 3-18-10; DEQ 16-2010, f. & cert. ef. 12-20-10

## 340-220-0050

### Specific Activity Fees

(1) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of August 26, 2009 to December 31, 2010 as follows:

(a) Existing source permit revisions:

(A) Administrative\* — \$437;

(B) Simple — \$1,748;

(C) Moderate — \$13,115;

(D) Complex — \$26,231.

(b) Ambient air monitoring review — \$3,497.

(2) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of January 1, 2011 to December 31, 2011 as follows:

(a) Existing source permit revisions:

(A) Administrative\* — \$437;

(B) Simple — \$1,751;

(C) Moderate — \$13,139;

(D) Complex — 26,279.

(b) Ambient Air Monitoring Review -- \$ 3,503.

(3) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as of January 1, 2012 as follows:

(a) Existing source permit revisions:

(A) Administrative\* — \$ 444;

(B) Simple — \$1,777;

(C) Moderate — \$13,333;

(D) Complex — \$26,667.

(b) Ambient Air Monitoring Review — \$ 3,555.

(4) The Department will assess the following specific activity fee for an Oregon Title V Operating Permit program source for annual greenhouse gas reporting, as required by OAR 340-215-0060(1) — Fifteen percent of the following, not to exceed \$4,500:

(a) The applicable annual base fee (for the period of November 15 of the current year to November 14 of the following year); and

(b) The applicable annual emission fee (for emissions during the previous calendar year).

\*Includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in 340-218-0150 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 16-2010, f. & cert. ef. 12-20-10

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**Rule Caption:** Amendments to Oregon Water Quality Standards for Iron and Manganese.

**Adm. Order No.:** DEQ 17-2010

**Filed with Sec. of State:** 12-21-2010

**Certified to be Effective:** 12-21-10

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 340-041-0033

**Subject:** The rule revision withdraws the human health “water and fish ingestion” for iron and manganese from Oregon’s water quality criteria contained in Table 20 and incorporated into rule by reference in OAR 340-041-0033(2). In addition, the rule revision withdraws the “fish consumption only” criterion for manganese as it applies to freshwaters of the state, leaving this criterion in place as applicable to saltwater only.

DEQ and EPA use Oregon’s water quality standards to implement Clean Water Act programs, which include assessing Oregon’s water quality and developing and enforcing wastewater discharge permits, Total Maximum Daily Loads and water quality certifications.

**Rules Coordinator:** Maggie Vandehey — (503) 229-6878

## 340-041-0033

### Toxic Substances

(1) Toxic substances may not be introduced above natural background levels in waters of the state in amounts, concentrations, or combinations that may be harmful, may chemically change to harmful forms in the environment, or may accumulate in sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety, or welfare or aquatic life, wildlife, or other designated beneficial uses.

(2) Levels of toxic substances in waters of the state may not exceed the applicable criteria listed in Tables 20, 33A, and 33B. Tables 33A and 33B, adopted on May 20, 2004, update Table 20 as described in this section.

(a) Each value for criteria in Table 20 is effective until the corresponding value in Tables 33A or 33B becomes effective.

(A) Each value in Table 33A is effective on February 15, 2005, unless EPA has disapproved the value before that date. If a value is subsequently disapproved, any corresponding value in Table 20 becomes effective immediately. Values that are the same in Tables 20 and 33A remain in effect.

(B) Each value in Table 33B is effective upon EPA approval.

(b) The department will note the effective date for each value in Tables 20, 33A, and 33B as described in this section.

(3) To establish permit or other regulatory limits for toxic substances for which criteria are not included in Tables 20, 33A, or 33B, the department may use the guidance values in Table 33C, public health advisories, and other published scientific literature. The department may also require or conduct bio-assessment studies to monitor the toxicity to aquatic life of complex effluents, other suspected discharges, or chemical substances without numeric criteria.

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

Stat. Auth.: ORS 468.020, 468B.030, 468B.035 & 468B.048

Stats. Implemented: ORS 468B.030, 468B.035 & 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03; DEQ 3-2004, f. & cert. ef. 5-28-04; DEQ 17-2010, f. & cert. ef. 12-21-10

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**Rule Caption:** Amendments to Oil Spill Contingency Planning and Fees.

**Adm. Order No.:** DEQ 18-2010

**Filed with Sec. of State:** 12-23-2010

**Certified to be Effective:** 12-23-10

**Notice Publication Date:** 10-1-2010

**Rules Amended:** 340-141-0010

**Subject:** The rule revision aligns the fees with current statutes by reference to ORS 468B.405.

**Rules Coordinator:** Maggie Vandehey — (503) 229-6878

## 340-141-0010

### Program Administration and Compliance Fees

(1) All offshore and onshore facilities required to develop oil spill prevention and emergency response plans under ORS 468B.345 are required to pay the annual fee established in 468B.405(1). Fees for offshore and onshore facilities are due July 1 each year and cover the following 12 month period.

(2) Covered vessels are required to pay the per trip or daily fee established in 468B.405(1). Fees for covered vessels must be remitted to the Department within 60 days of the conclusion of each trip.

# ADMINISTRATIVE RULES

(3) Moneys collected under this rule will be deposited in the State Treasury to the credit of the Oil Spill Prevention Fund established by ORS 468B.410.

Stat. Auth.: ORS 468.020 & 468B.345 - 468B.500  
Stats. Implemented: ORS 468B.405  
Hist.: DEQ 2-2003, f. & cert. ef. 1-31-03; DEQ 8-2005, f. & cert. ef. 7-14-05; DEQ 18-2010, f. & cert. ef. 12-23-10

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## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Recreational Sturgeon Fisheries in the Willamette River Downstream of Willamette Falls Close.

**Adm. Order No.:** DFW 163-2010(Temp)

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 1-1-11 thru 6-29-11

**Notice Publication Date:**

**Rules Amended:** 635-017-0095

**Subject:** This amended rule closes the recreational white sturgeon fishery in the Willamette River downstream of Willamette Falls, including Multnomah Channel and the Gilbert River. This action is needed to provide flexibility in season structure following Oregon Fish and Wildlife Commission white sturgeon policy guidance which should be available in February 2011.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

### 635-017-0095

#### Sturgeon Season

(1) The 2011 Oregon Sport Fishing Regulations provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2011 Oregon Sport Fishing Regulations.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel and the Gilbert River) is closed to the retention of white sturgeon until further notice.

(3) Bank angling is prohibited from the east shore of the Willamette River the entire year in the area beginning west of Highway 99E, at the northern-most extent of the parking area near the intersection of 8th Street and Highway 99E in Oregon City, approximately 290 feet downstream of the Oregon City/West Linn bridge (Hwy 43) and extending upstream approximately 1715 feet to the retaining wall extending into the Willamette River at the NW corner of the Blue Heron Paper Mill.

(4) Only white sturgeon with a fork length of 38-54 inches may be retained. Retention of green sturgeon is prohibited all year in all areas.

(5) Angling for sturgeon, including catch-and-release, is prohibited seven days per week during May 1 through August 31 from Willamette Falls downstream to the I-205 Bridge.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 90-2010(Temp), f. 6-29-10, cert. ef. 7-5-10 thru 12-31-10; DFW 154-2010(Temp), f. & cert. ef. 11-8-10 thru 12-31-10; DFW 163-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11

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**Rule Caption:** Hood River Sport Coho and Steelhead Fisheries.

**Adm. Order No.:** DFW 164-2010(Temp)

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 1-1-11 thru 6-29-11

**Notice Publication Date:**

**Rules Amended:** 635-018-0090

**Subject:** Amended rule allows the sport harvest of adipose fin-clipped Coho salmon and adipose fin-clipped steelhead in the Hood River beginning January 1, 2011. Further modifications adjust angling deadlines following the removal of Powerdale Dam last fall. Bag limits of 2 adult salmon or steelhead per day, 20 per year and 5 jack salmon per day, 2 daily limits in possession; 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 are already set by permanent rules for the Central Zone.

**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.

[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

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**Rule Caption:** Columbia River Mainstem Recreational Sturgeon Fisheries Modified.

**Adm. Order No.:** DFW 165-2010(Temp)

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 1-1-11 thru 6-29-11

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Subject:** This amended rule modifies the recreational white sturgeon fishing season in the Columbia River downstream from Bonneville Dam; and from McNary Dam upstream to the Oregon/Washington Border effective January 1, 2011. These modifications close a known sturgeon concentration area (below Bonneville Dam) to angling in order to protect the resource and to provide concurrent regulations with Washington (above McNary Dam).

**Rules Coordinator:** Therese Kucera—(503) 947-6033



# ADMINISTRATIVE RULES

## 635-023-0095 Sturgeon Season

cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) The mainstem Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette River upstream to Willamette Falls, Multnomah Channel, and the Gilbert River, is open to the retention of white sturgeon with a fork length of 38-54 inches, three days per week, Thursdays through Saturdays, during the following periods:

- (a) January 1 through July 31; and
- (b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The mainstem Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

- (a) January 1 through April 30;
- (b) May 9 through June 28; and
- (c) July 2 through July 5 (or until guideline is met).

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 8, from June 29 through July 1, and July 6 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38-54 inches may be retained.

(7) During the fishing periods as identified in subsections (4)(b) and (4)(c) of this rule, only white sturgeon with a fork length of 41-54 inches may be retained.

(8) Angling for sturgeon is prohibited from:

(a) Bonneville Dam downstream to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to Washington shore during May 1 through August 31;

(b) Highway 395 Bridge upstream to McNary Dam; and

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(d) The upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from January 1 through April 30, 2011.

(9) The mainstem Columbia River from McNary Dam upstream to the Oregon-Washington border at river mile 309.5 is open to retention of white sturgeon with a fork length of 43-54 inches, seven days per week from February 1 through July 31.

(10) The retention of white sturgeon in the area identified in section (9) of this rule is prohibited August 1 through January 31.

(11) Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10,

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**Rule Caption:** Columbia River Commercial Sturgeon Seasons Set for January and February 2011 Below Bonneville Dam.

**Adm. Order No.:** DFW 166-2010(Temp)

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 1-15-11 thru 7-13-11

**Notice Publication Date:**

**Rules Amended:** 635-042-0135

**Subject:** This amended rule implements winter commercial white sturgeon seasons in the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets. The fishing periods are: 6:00 p.m. Tuesday, January 18 to 6:00 p.m. Wednesday, January 19, 2011 (24 hours); 6:00 p.m. Tuesday, January 25 to 6:00 p.m. Wednesday, January 26, 2011 (24 hours); 6:00 p.m. Tuesday, February 1 to 6:00 p.m. Wednesday, February 2, 2011 (24 hours), and 6:00 p.m. Tuesday, February 8 to 6:00 p.m. Wednesday, February 9, 2011 (24 hours).

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-042-0135 Sturgeon Season

(1) White sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Retention of green sturgeon in all mainstem Columbia River and Select Area commercial fisheries is prohibited.

(3) White sturgeon and adipose fin-clipped salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Only white sturgeon and adipose fin-clipped salmon may be sold from this fishery. A maximum of 10 white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The open fishing periods are:

(a) 6:00 p.m. Tuesday January 18 to 6:00 p.m. Wednesday January 19, 2011;

(b) 6:00 p.m. Tuesday January 25 to 6:00 p.m. Wednesday January 26, 2011;

(c) 6:00 p.m. Tuesday February 1 to 6:00 p.m. Wednesday February 2, 2011; and

(d) 6:00 p.m. Tuesday February 8 to 6:00 p.m. Wednesday February 9, 2011;

(4) White sturgeon and salmon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(5) During the fishery identified in section (3) of this rule, nets fished any time between official sunset and sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(6) It is *unlawful* to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any white sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white sturgeon smaller than 43 inches or larger than 54 inches in fork length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

# ADMINISTRATIVE RULES

(7) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (3) of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119  
Stats. Implemented: ORS 506.129 & 507.030  
Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 8-2007(Temp), f. 2-12-07, cert. ef. 2-13-07 thru 8-11-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 14-2008(Temp), f. & cert. ef. 2-21-08 thru 8-18-08; Administrative correction 9-29-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; Administrative correction 8-21-09; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; Administrative correction 4-21-10; DFW 166-2010(Temp), f. 12-28-10, cert. ef. 1-15-11 thru 7-13-11

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**Rule Caption:** Inseason Actions and Management Measures Implemented by the Federal Government for Commercial Groundfish Fisheries.

**Adm. Order No.:** DFW 167-2010(Temp)

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 1-1-11 thru 1-31-11

**Notice Publication Date:**

**Rules Amended:** 635-004-0019

**Rules Suspended:** 635-004-0019(T)

**Subject:** The amended rule adopts in-season actions and new management measures implemented by the federal government for Pacific ocean commercial groundfish fisheries, 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.

**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.**

(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 lincolnd 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.

[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

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**Rule Caption:** Establishes 2011 Seasons ad regulations for Game Mammals.

**Adm. Order No.:** DFW 168-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 635-008-0055, 635-008-0153, 635-010-0157, 635-045-0002, 635-060-0023, 635-060-0030, 635-060-0055, 635-065-0001, 635-065-0015, 635-065-0090, 635-065-0401, 635-065-0625, 635-065-0700, 635-065-0705, 635-065-0740, 635-065-0760, 635-066-0000, 635-067-0000, 635-072-0000, 635-073-0076, 635-075-0001, 635-075-0010, 635-080-0016, 635-080-0021, 635-080-0023, 635-080-0026

**Subject:** Establish the 2011 hunting regulations for game mammals, including season dates, open areas, location of cooperative trawl management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-008-0055

### Bridge Creek Wildlife Area

The Bridge Creek Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the 2009 Bridge

# ADMINISTRATIVE RULES

Creek Wildlife Area Management Plan unless otherwise excluded or restricted by the following rules:

(1) The area is closed to entry during the period December 1 through April 14, except by permit.

(2) Motor vehicles are prohibited except on parking areas, open roads, and up to 300 feet off open roads for the purpose of moving to and from campsites.

(3) Camping is prohibited except during the period April 15 through November 30, and may not exceed 14 days per stay.

(4) Campfires or open burning is prohibited except at campsites. Open fires are prohibited during designated fire closures.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(1); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 81-2006, f. & cert. ef. 8-11-06; DFW 40-2009, f. & cert. ef. 4-27-09; DFW 117-2010, f. & cert. ef. 8-13-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-008-0153

### Phillip W. Schneider Wildlife Area

The Phillip W. Schneider Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the 2006 Phillip W. Schneider Wildlife Area Management Plan unless otherwise excluded or restricted by the following rules:

(1) Motor vehicles are prohibited except on parking areas, open roads, and up to 300 feet off open roads for the purpose of moving to and from campsites.

(2) Camping along the South Fork John Day road is open yearlong. On the remainder of the wildlife area camping is prohibited except during the period April 15 through November 30. Camping may not exceed 14 days per stay.

(3) Campfires or open burning is prohibited except at campsites. Open fires are prohibited during designated fire closures.

(4) The area is closed to entry during the period of February 1 through April 14, except by permit.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162  
Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(12); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 30-2000, f. & cert., ef. 6-14-00, Renumbered from 635-008-0125; DFW 118-2006, f. & cert. ef. 10-16-06; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-010-0157

### Free Resident Licenses for Disabled Veterans

(1) Pursuant to ORS 497.102 and 497.121, a disabled veteran is entitled to a free hunting license, angling license and shellfish license if the veteran meets the following requirements. The license remains valid so long as the licensee remains an Oregon resident.

(a) The veteran has been an Oregon resident for at least six months; and

(b) The veteran provides to the Department written certification from the U.S. Veteran's Administration or any branch of the U.S. Armed Forces that the veteran is at least 25 percent disabled.

(2) Any valid permanent angling license issued before January 1, 2000, to a person permanently confined to a wheelchair is valid for as long as the licensee is a resident of Oregon.

Stat. Auth.: ORS 496, 497 & Ch. 25, OL 1999  
Stats. Implemented: ORS 496 & 497, Ch. 25, OL 1999  
Hist.: FWC 124-1990, f. 11-28-90, cert. ef. 1-1-91; DFW 99-1999(Temp), f.12-22-99, cert. ef. 1-1-00 thru 6-27-00; DFW 33-2000, f. & cert. ef. 6-19-00; DFW 30-2002, f. & cert. ef. 4-11-02; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-045-0002

### Definitions

(1) "Adult hunting license" is a resident or nonresident hunting license, resident combination angling and hunting license, disabled veteran's angling and hunting license, pioneer's angling and hunting license or senior citizen's angling and hunting license.

(2) "Agricultural lands" are lands that are not less than ten acres in extent that have been cultivated and planted or irrigated to domestic crops that are currently in use. Isolated home gardens, abandoned farmsteads, logged lands, rangelands, and tree farms, are not included in this definition.

(3) "Antler Point" is a point at least one inch in length measured from tip of point to nearest edge of beam. This definition applies only to the three-point elk and spike only elk bag limits.

(4) "Antlerless deer" means doe or fawn deer.

(5) "Antlerless elk" means cow or calf elk.

(6) "Application" means the electronic form completed and purchased to apply for a hunt where the number or distribution of hunters is limited through a public drawing or other means. Mail order applications sent to the Department along with the proper remittance are used to generate the electronic form.

(7) "Bait" for hunting game mammals means any substance placed to attract an animal by its sense of smell or taste, including but not limited to food items or minerals (such as salt). Applying a scent or attractant to one's body or clothing while worn, is not baiting.

(8) "Baited Area" means an area where baiting has taken place.

(9) "Baiting" means the placing, exposing, depositing, distributing, or scattering of corn, wheat, salt or other feed to constitute a lure or enticement to, on, or over an area where hunters are attempting to take game birds.

(10) "Brace" is defined as an orthosis that is prescribed by a physician and fabricated by an orthotist certified by the American Board for Certification in Orthotics and Prosthetics, Inc.

(11) "Brace Height" is the distance from the back of the bow's riser at the handgrip to the string when the bow is at rest.

(12) "Buck Deer" means a male deer with at least one visible antler.

(13) "Buck Pronghorn" means a male pronghorn antelope with visible horns and a dark cheek patch below the ear.

(14) "Bull elk" for the purposes of a bag limit definition, means a male elk with at least one visible antler.

(15) "Calendar year" means from January 1 through December 31.

(16) "Carcass" is the skinned or unskinned body, with or without entrails, of a game bird or game mammal.

(17) "Cascade elk" means any live elk occurring in the Dixon, Evans Creek, Indigo, Keno, McKenzie, Metolius, Rogue, Santiam and Upper Deschutes units and those parts of Fort Rock and Sprague units west of Highway 97, and that part of Grizzly Unit west of Hwy 97 and south of Hwy 26.

(18) "Closed season" is any time and place when it is not authorized to take a specific species, sex or size of wildlife.

(19) "Coast elk" means any live elk occurring in the Alsea, Applegate, Chetco, Melrose, Powers, Saddle Mountain, Scappoose, Siuslaw, Sixes, Stott Mountain, Tioga, Trask, Willamette, and Wilson units.

(20) "Commission" means the Oregon Fish and Wildlife Commission.

(21) "Controlled hunt" is a season where the number or distribution of hunters is limited through a public drawing or other means.

(22) "Department" means the Oregon Department of Fish and Wildlife.

(23) "Director" means the Oregon Fish and Wildlife Director.

(24) "Doe or fawn pronghorn" means a female pronghorn antelope without a dark cheek patch below the ear or a pronghorn fawn (young of the year) of either sex.

(25) "Domestic partner" means, as provided in section 3 of the Oregon Family Fairness Act of 2007 (ORS Chapter 106), "an individual who has, in person, joined into a civil contract with another individual of the same sex, provided that each individual is at least 18 years of age and is otherwise capable, and that at least one of the individuals is a resident of Oregon."

(26) "Eastern Oregon" means all counties east of the summit of the Cascade Range including all of Klamath and Hood River counties.

(27) "Eastern Oregon deer" means any live deer occurring east of the east boundaries of the Santiam, McKenzie, Dixon, Indigo and Rogue units.

(28) "Eligible Hunter" means someone who will be 12 years of age by the time they hunt.

(29) "Entry permit" means a permit issued by the Department to be in an area where entry is restricted by regulation.

(30) "Established airport" is one that the Oregon Department of Aviation has licensed as a public-use airport, registered as a personal-use airport, or specifically exempted from either licensing or registration.

(31) "Feral Swine" means animals of the genus *Sus* as defined by the Oregon Department of Agriculture in OAR 603-010-0055.

(32) "Fiscal year" means from July 1 through June 30.

(33) "Furbearers" are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox.

(34) "Game Birds" are any waterfowl, snipe, band-tailed pigeon, dove, pheasant, quail, partridge, grouse, or wild turkey.

(35) "Game mammals" are pronghorn antelope, black bear, cougar, deer, elk, moose, Rocky Mountain goat, bighorn sheep, and western gray squirrel.



## ADMINISTRATIVE RULES

(36) "General season" is any season open to the holder of a valid hunting license and appropriate game mammal tag without restriction as to the number of participants.

(37) "Hunter certification" means to have met educational, safety or other requirements designated by administrative rule for participation in a hunt.

(38) "Hunt" means to take or attempt to take any wildlife by means involving the use of a weapon or with the assistance of any mammal or bird.

(39) "Husbandry" means the care given animals directly by their owners and managers, including but not limited to:

- (a) Nutrition;
- (b) Breeding program;
- (c) Veterinary medical care;
- (d) Environmental cleanliness; and
- (e) Humane handling.

(40) "Immediate family" for the purpose of Landowner Preference, means a landowner's spouse, children, father, mother, brother, sister, stepchildren, and grandchildren.; for all other purposes, it means spouse, domestic partner, children, father, mother, brother, sister, stepchildren, and grandchildren.

(41) "Inedible" means unfit for human consumption.

(42) "Juvenile hunting license" is a resident, nonresident hunting license or resident combination angling and hunting license for persons 9 to 17 years of age to hunt wildlife.

(43) "Landowner", as used in OAR chapter 635, division 075, means:

(a) A person who holds title in trust or in fee simple to 40 or more contiguous acres of land; provided however that a recorded deed or contract of ownership shall be on file in the county in which the land is located; and/or

(b) A corporation or Limited Liability Company (LLC) holding title in fee simple to 40 or more contiguous acres of land; provided however that the corporation or LLC shall be registered with the State of Oregon; and/or

(c) A partnership holding title in fee simple to 40 or more contiguous acres of land; and/or

(d) Persons who hold title as part of a time share are not eligible for landowner preference.

(44) "Low Income" means a person who is "economically disadvantaged" as defined in Section 4(8) of the Federal Job Training Partnership Act of 1982.

(45) "Mounted Wildlife" means any hide, head or whole body of wildlife prepared by a licensed taxidermist for display.

(46) "Muzzleloader" is any single-barreled (shotguns may be double barreled) long gun meant to be fired from the shoulder and loaded from the muzzle with an open ignition system and open or peep sights.

(47) "On or within" means a straight line distance measured on a map.

(48) "One deer" means a buck, doe, or fawn deer.

(49) "One elk" means a bull, cow, or calf elk.

(50) "Open Ignition" is an ignition system where the percussion cap, or frizzen, or flint is visible and exposed to the weather at all times and is not capable of being closed or covered by any permanent piece of the weapon.

(51) "Partner" means a person in an association of two or more persons formed to carry on as co-owners for profit.

(52) "Point-of-Sale" (POS) is a computerized licensing system available at locations that sell Oregon's hunting and angling licenses. Licenses and tags are generated and issued directly to customers from a POS machine at the time of sale.

(53) "Possession" means to have physical possession or to otherwise exercise dominion or control over any wildlife or parts thereof, and any person who counsels, aids or assists another person holding such wildlife is deemed equally in possession.

(54) "Postmark" means the date of mailing as stated in a mark applied by the U.S. Postal Service to a piece of mail. Office postal machine meter marks are not valid application deadline postmarks.

(55) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities.

(56) "Protected wildlife" means "game mammals" as defined in OAR 635-045-0002(34) "game birds" as defined in 635-045-0002(33), "furbearers" as defined in 635-045-0002(32), "threatened and endangered species" as defined in 635-100-0125, and "nongame wildlife protected" as defined in 635-044-0130.

(57) "Pursue" means the act of trailing, tracking, or chasing wildlife in an attempt to locate, capture, catch, tree, or kill any game mammal or furbearer.

(58) "Raw pelt" means any pelt that has not been processed or converted to any usable form beyond initial cleaning, stretching, and drying.

(59) "Resident" is any person who has resided in Oregon for a period of at least six months immediately prior to the date of making application for a license or tag. Members of the armed forces assigned to permanent duty status in Oregon including spouses and dependent children, and foreign exchange students attending school in Oregon under a foreign student exchange program may purchase a resident license and tags. All other persons are nonresidents.

(60) "Resident juvenile" is any "Resident" of Oregon 14 through 17 years of age.

(61) "River" is that portion of a natural water body lying below the level of bankfull stage. Bankfull stage is the stage or elevation at which overflow of the natural banks of a stream or body of water begins to inundate the upland.

(62) "Rocky Mountain elk" is any live elk occurring east of the following described line: Beginning at the California line on Highway 97; north on Highway 97 to State Highway 26 at Madras; northwest on Highway 26 to east boundary of Santiam Unit; north along east boundary of Santiam Unit to the Columbia River.

(63) "Sabot" A carrier, bushing or device in which a projectile of a smaller caliber is centered so as to permit firing the projectile within a larger caliber weapon. Cloth, paper or felt patches used with round balls are not considered a sabot.

(64) "Shotgun" is a smoothbore firearm, designed for firing birdshot, and intended to be fired from the shoulder, with a barrel length of 18 inches or more, and with an overall length of 26 inches or more. Exception: Shotguns equipped with rifled slug barrels are considered shotguns when used for hunting pronghorn antelope, black bear, cougar, deer, or elk when centerfire rifles or shotguns are legal weapons.

(65) "Sight bait" is exposed flesh bait within 15 feet of any foothold trap set for carnivores.

(66) "Spike deer" is a deer with spike (unbranched) antlers.

(67) "Spike-only bull elk" means a bull elk with at least one visible unbranched antler (brow tines are not considered an antler branch under spike-only regulations).

(68) "Stockholder" is a person who owns stock within a corporation as defined in OAR 635-045-0002(42)(b).

(69) "Tag" is a document authorizing the taking of a designated kind of mammal at a specified time and place.

(70) "Take" means to kill or obtain possession or control of any wildlife.

(71) "Three point plus elk" for the purposes of a bag limit definition, means a bull elk having 3 points or more on one antler including the brow tine.

(72) "Unbarbed broadhead" is a fixed position arrowhead where the rear edge of the blade(s) forms an angle with the arrow shaft to which it is attached of 90° or greater.

(73) "Unprotected Mammals and Birds" are European starling, house sparrow, rock pigeon and any mammal species for which there are no closed seasons or bag limits.

(74) "Valid certification permit" is a permit for the current season that has not become invalid after taking a season limit or illegal game bird.

(75) "Visible Antler" means a velvet or hardened antler that is visible above the hairline on the skullcap and is capable of being shed.

(76) "Wait period" means the length of time a successful controlled hunt applicant must wait before reapplying for the species for which he was successful in drawing.

(77) "Waste" means to allow any edible portion of any game mammal (except cougar) or game bird to be rendered unfit for human consumption, or, to fail to retrieve edible portions, except internal organs, of such game mammals or game birds from the field. Entrails, including the heart and liver, are not considered edible.

(78) "Waterfowl" means ducks, geese, mergansers and coots.

(79) "Weapon" is any device used to take or attempt to take wildlife.

(80) "Western Oregon" means all counties west of the summit of the Cascade Range except Klamath and Hood River counties.

(81) "Western Oregon deer" is any live deer except the Columbian white-tailed deer occurring west of the east boundaries of the Santiam, McKenzie, Dixon, Indigo, and Rogue units.

(82) "Wildlife" means fish, wild birds, amphibians, reptiles, wild mammals, and feral swine.

(83) "Wildlife" means for the purposes of harassment to relieve damage described in OAR 635-043-0096 through 635-043-0115, game mam-

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mals, game birds except migratory birds protected by Federal law, furbearing mammals and wildlife declared protected by the commission.

(84) "Wildlife" means for the purposes of scientific taking described in OAR 635-043-0023 through 635-043-0045, wild birds, wild mammals, amphibians and reptiles, including nests, eggs, or young of same.

(85) "Wildlife" means, for the purposes of the Wildlife Diversity Plan described in OAR 635-100-0001 through 635-100-0194, fish, shellfish, amphibians, reptiles, feral swine, wild mammals, wild birds, and animals living intertidally on the bottom as defined by ORS 506.011.

(86) "Wildlife unit" is a geographic area described in OAR 635-080-0000 through 635-080-0077.

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

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

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

Hist.: FWC 47-1989, f. & cert. ef. 7-25-89; FWC 104-1989, f. & cert. ef. 9-29-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 22-1990, f. & cert. ef. 3-21-90; FWC 17-1991, f. & cert. ef. 3-12-91; FWC 33-1991, f. & cert. ef. 3-25-91; FWC 50-1991, f. & cert. ef. 5-13-91; FWC 57-1991, f. & cert. ef. 6-24-91; FWC 9-1993, f. & cert. ef. 2-8-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 20-1995, f. & cert. ef. 3-6-95; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 50-1996, f. & cert. ef. 8-30-96; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 53-1997, f. & cert. ef. 9-3-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 127-2006, f. & cert. ef. 12-7-06, cert. ef. 1-1-07; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. & cert. ef. 10-31-07, c. cert. ef. 1-1-08; DFW 52-2008, f. & cert. ef. 5-28-08; DFW 150-2008, f. & cert. ef. 12-18-08, cert. ef. 1-1-09; DFW 108-2009, f. & cert. ef. 9-8-09; DFW 140-2009, f. & cert. ef. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. & cert. ef. 12-29-10, cert. ef. 1-1-11

## 635-060-0023

### Modified Preference Point System

(1) The Modified Preference Point System separates the tags for each controlled game mammal hunt into two groups:

(a) Seventy-five percent of the tags will be issued through the preference point system;

(b) The remaining 25 percent of the tags will be issued by the equal-probability computer drawing.

(2) Applicants shall accrue no more than one preference point per hunt number series per year. Valid applicants who did not receive controlled hunt tags for their first choice hunt number in the 100, 200, 400, 600, or 700 series hunts during the controlled hunt drawing shall receive one preference point applicable to subsequent controlled hunt drawings for the respective hunt number series, except as excluded in OAR 635-060-0008(4).

(3) A preference point will automatically accrue within each controlled hunt series when an applicant's first choice is as follows:

- (a) Hunt number 199: controlled buck deer;
- (b) Hunt number 299: controlled elk;
- (c) Hunt number 499: controlled pronghorn antelope;
- (d) Hunt number 699: controlled antlerless deer;
- (e) Hunt number 799: controlled black bear.

(4) Youth nine years of age or older are eligible to apply for automatic Preference Points as described in (3) provided they have a social security number, a Hunter/Angler ID number issued by ODFW, and purchase the appropriate (resident or nonresident) juvenile or adult hunting license.

(5) The Modified Preference Point System will group controlled hunt applicants by the number of preference points they have accrued for each hunt number series. Applicants with the highest number of preference points for each hunt number will be drawn first. Applicants having the next highest number of preference points per hunt number will be drawn next. This tag issuance process will continue through descending numbers of preference points until 75 percent of the tags authorized for the hunt have been issued, unless all qualified applicants with preference points have been issued tags prior to that point. Any tags remaining following the issuance of preference point tags will be issued through the equal-probability computer drawing. Applicants unsuccessful in the preference point tag issuance procedure and those applicants without preference points will be placed in the equal-probability computer drawing for the remaining tags.

(6) Applicants, except for those with a Pioneer Angling/Hunting License, successful in drawing their first choice hunt except numbers ending in 99 within a hunt number series shall have zero preference points when they next apply for a tag in that hunt number series. Successful Applicants with a Pioneer Angling/Hunting License shall have one preference point when they apply for a tag in that hunt number series.

(7) Beginning in 2008 applicants will not forfeit preference points accumulated for a hunt number series when they do not apply for that hunt number series for two consecutive years.

(8) Applicants who have their hunting license suspended or revoked by legal action will forfeit all preference points.

(9) Party applicant preference points shall be determined by totaling the preference points of all party members and then calculating the average of this total. Party preference points will be rounded up from x.51 (e.g. 3.51 to 4, 3.50 to 3) to the next whole number.

(10) Department records are final to determine accrued preference points for controlled hunt applicants.

(11) Each applicant's preference point accrual record will be linked to his or her permanent identification number. Preference point applicants shall use the permanent identification number each time they apply for a controlled hunt tag. Failure to do so shall place the applicant in the equal-probability drawing for his or her hunt number series and preference points will not be accrued together.

(12) Applicants will receive no preference points when:

(a) Their application is not received by the appropriate application date;

(b) They request their controlled hunt application be withdrawn prior to the controlled hunt drawing;

(c) The controlled hunt application has been falsified.

(13) The Modified Preference Point System shall apply to 100, 200, 400, 600, and 700 series hunts.

(14) In 2005, 800 series points will be converted into 600 series points.

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

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

Hist.: FWC 6-1994, f. & cert. ef. 1-26-94; FWC 13-1994(Temp), f. & cert. ef. 3-1-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 122-2004, f. & cert. ef. 12-21-04, cert. ef. 1-1-05; DFW 118-2007, f. & cert. ef. 10-31-07, cert. ef. 1-1-08; DFW 124-2007, f. & cert. ef. 11-28-07, cert. ef. 12-1-07; DFW 140-2009, f. & cert. ef. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. & cert. ef. 12-29-10, cert. ef. 1-1-11

## 635-060-0030

### Issuing Tags

(1) The Department may, except for bighorn sheep and Rocky Mountain goat, issue tags or permits in excess of the quantity authorized by the commission to resolve documented errors made by the Department. The quantity shall not exceed an amount consistent with the management goals of the hunt.

(2) The number of controlled deer and controlled elk tags issued to nonresident applicants shall not exceed five percent of the tags authorized for each hunt.

**Exception:** one nonresident tag may be issued for each hunt when the number of authorized tags is fewer than 35. This number does not affect the tags issued under the Landowner Preference Program (OAR chapter 635, division 075).

(3) Tags will not be issued to a party (residents or nonresidents) when, during the drawing process, the party size exceeds the number of remaining tags.

(4) Youths age 12-17 who are unsuccessful in the first controlled hunt drawing for 100, 200, or 600 series hunts may apply for one guaranteed "first time" tag per series, provided that:

(a) Youths are limited to only one "first time" tag per series in a lifetime.

(b) Within the 200 series, only hunts with antlerless only bag limits are available as "first time" tags.

(c) Hunts are only available as "first time" opportunities as follows: 100 series hunts must have had more than 200 tags available in the first drawing; 200 and 600 series hunts must have had more than 50 tags available in the first drawing.

(d) Applicants shall use forms available in the Oregon Big Game Regulations and applications must be received at the Department's Salem headquarters by September 1, each year.

(e) Persons who were successful in any controlled hunt drawing for 100, 200, or 600 series hunts are never again eligible for "first time" tags in the respective hunt series.

(f) Successful "first time" applicants shall purchase tags at POS vendors by the day before the assigned season begins.

(g) Youths may not receive a "First Time" youth hunt tag in a hunt series if they applied for a point saver option in the primary big game drawing.

(5) Incentive tags for compliance with Mandatory Harvest Reporting requirements The Fish and Wildlife Commission authorizes the Department to issue hunting tags as incentives to encourage hunters to comply with requirements for harvest reporting. Any hunter who complies with harvest reporting requirements by the specified deadline will be automatically entered in a controlled hunt draw for one Mandatory Hunter Reporting

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Incentive Tag valid for the upcoming hunting season. Obtaining and using such tags is governed by OAR 635-065-0015(7).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 18-1991, f. & cert. ef. 3-12-91; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 86-2003(Temp), f. & cert. ef. 8-29-03 thru 9-4-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 58-2010(Temp), f. & cert. ef. 5-12-10 thru 11-8-10; Administrative correction 11-23-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-060-0055

### Documents Required in Field

(1) A person hunting in any controlled game mammal hunt shall have on his or her person a valid hunting license, Hunter Education Certificate or a Department document which includes their Hunter Education Certificate Number (for persons less than 18 years old), and a controlled hunt tag (if applicable) for the area and season being hunted. The hunting license number shall be the same as that indicated on the controlled hunt tag.

**Exception:** Controlled hunts continuing or occurring after December 31, 2011 may have a 2012 hunting license number on the controlled hunt tag.

(2) A tag or permit holder for a hunt after December 31, 2011 shall have on his or her person a valid 2012 hunting license.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 38-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 14-1992, f. 3-10-92, cert. ef. 3-13-92 (and corrected 3-13-92); FWC 36-1993, f. & cert. ef. 6-14-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 4-2003, f. 1-17-03, cert. ef. 4-1-03; DFW 119-2003, f. 12-4-03, cert. ef. 4-1-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 132-2005, f. 12-1-05, cert. ef. 4-1-06; DFW 126-2006, f. 12-7-06, cert. ef. 4-1-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 117 2010, f. & cert. ef. 8-13-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-065-0001

### Purpose and General Information

(1) The purpose of these rules is to establish license and tag requirements, limits, areas, methods and other restrictions for hunting game mammals pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 065 incorporates, by reference, the requirements for hunting game mammals set out in the document entitled "2011 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2011 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for game mammals. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district, and headquarters offices, and website of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 88-2003(Temp), f. & cert. ef. 9-3-03 thru 12-31-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-065-0015

### General Tag Requirements and Limits

(1) Big Game Tags: Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

(2) Any person 12 years of age or older may purchase game mammal tags if they possess an adult hunting license.

(3) A person may obtain and possess during an annual hunting season only:

- (a) One valid general season black bear tag;
- (b) One valid additional general black bear tag valid in management units 20–30;

(c) One valid controlled black bear tag in addition to general season bear tags issued under subsection (a) and (b) above;

(d) One valid 700 series "leftover" controlled bear tag;

(e) One valid cougar (mountain lion) tag;

(f) One valid eastern additional general cougar (mountain lion) tag;

(g) One valid pronghorn antelope tag.

(4) Except as provided in OAR chapter 635, division 090, and except as provided in OAR 635-075-0010, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid deer bow tag;

(b) One valid western Oregon deer tag;

(c) One valid 100 series controlled buck hunt tag;

(d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)–(4)(c) and (4)(e);

(e) One valid 100 series "left over" controlled deer tag;

(f) One valid 600 series "left over" controlled deer tag;

(5) Except as provided in OAR chapter 635, division 090, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid Cascade elk tag;

(b) One valid Coast First Season elk tag;

(c) One valid Coast Second Season elk tag;

(d) One valid Rocky Mountain elk – first season tag,

(e) One valid Rocky Mountain elk – second season tag;

(f) One valid elk bow tag;

(g) One valid controlled elk hunt tag;

(6) In addition to the tags described in OAR 635-065-0015(5), a person during an annual hunting season may obtain or possess only one valid 200 series "leftover" controlled elk tag.

(7) In addition to the tags described in OAR 635-065-0015(3), (4), and (5), a person during an annual hunting season may obtain or possess only one valid "Mandatory Hunter Reporting Incentive Tag" per annual hunting season. If the Department awards a hunter such a tag through the controlled hunt draw authorized by 635-060-0030(5), the following requirements will apply:

(a) On or before July 15, 2010 the hunter must inform the Department which species the tag is to be issued for (pronghorn antelope, deer, or elk) and purchase the tag. Tags not purchased by July 15 will be offered to an alternate hunter with a tag sale deadline of July 31, 2010.

(b) Hunting hours, hunt dates, bag limit and hunt area for Mandatory Hunter Reporting Incentive Tags will be the same as those listed in OAR 635-090-150(3) for deer or (4) for elk, or 635-067-0028(2) for pronghorn.

(c) Bag limit: one pronghorn antelope or one deer or one elk.

(d) Oregon Department of Fish and Wildlife employees are not eligible for a Mandatory Hunter Reporting Incentive Tag.

(8) Except as provided in OAR 635-067-0032 thru 635-067-0034, a person may obtain and possess only one bighorn sheep ram tag in a lifetime.

(9) A person may obtain and possess only one Rocky Mountain goat tag in a lifetime.

(10) It is unlawful for any person to issue or to possess any game mammal tag which has been backdated.

(11) Any game mammal tag having an issue date subsequent to the last day authorized for issue of such tag as listed in "Oregon Big Game Regulations" for the current season is a void tag. Exception:

(a) Members of the armed forces returning to the state after the deadline shall be permitted to purchase general season tags for themselves at the Salem headquarters and regional offices of the Department.

(b) Notwithstanding the deadlines for tag purchases provided by rule and in the hunting regulation synopses, any person who qualifies to purchase a tag but fails to make the purchase by the deadline, may purchase the tag late if the person

(A) Submits a written affidavit certifying that the person has not yet hunted during the season for which the tag is sought to the Department's Licensing Services Office;

(B) The request must be received by the Department before the end of the season for the particular tag; and

(C) Pays the Department the fee for a duplicate tag, in addition to the usual tag fee.

(D) A tag purchased for a season that has not begun may be canceled and replaced with a tag for an ongoing season using the process outlines in 635-065-0015 (b)(A) and (B) provided the original tag is surrendered with the affidavit and the fee for a duplicate tag is paid to the Department.

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



# ADMINISTRATIVE RULES

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89, Renumbered from 635-65-780; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 18-1994, f. & cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 6-17-97, f. & cert. ef. 6-17-97; FWC 49-1998, f. & cert. ef. 6-22-98; FWC 1-1999, f. & cert. ef. 1-14-99; FWC 47-1999, f. & cert. ef. 6-16-99; FWC 92-1999, f. 12-8-99, cert. ef. 1-1-00; FWC 30-2000, f. & cert. ef. 6-14-00; FWC 54-2000(Temp), f. & cert. ef. 8-28-00 thru 12-31-00; FWC 82-2000, f. 12-21-00, cert. ef. 1-1-01; FWC 47-2001, f. & cert. ef. 6-13-01; FWC 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; FWC 34-2002, f. & cert. ef. 4-18-02; FWC 59-2002, f. & cert. ef. 6-11-02; FWC 2-2003, f. & cert. ef. 1-17-03; FWC 118-2003, f. 12-4-03, cert. ef. 1-1-04; FWC 122-2004, f. 12-21-04, cert. ef. 1-1-05; FWC 128-2005, f. 12-1-05, cert. ef. 1-1-06; FWC 66-2009, f. & cert. ef. 6-10-09; FWC 106-2009(Temp), f. & cert. ef. 9-2-09 thru 3-1-10; FWC 140-2009, f. 11-3-09, cert. ef. 1-1-10; FWC 26-2010(Temp), f. & cert. ef. 3-3-10 thru 8-29-10; FWC 58-2010(Temp), f. & cert. ef. 5-12-10 thru 11-8-10; FWC 70-2010(Temp), f. & cert. ef. 5-18-10 thru 11-10-10; FWC 83-2010, f. & cert. ef. 6-15-10; FWC 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-065-0090

### Disabled Hunter Seasons and Bag Limits

(1) ORS 496.018 provides that in order to be considered a person with a disability under the wildlife laws, a person shall provide to the Fish and Wildlife Commission either written certification from a licensed physician, certified nurse practitioner, or licensed physician assistant of certain specified disabilities or written proof that the U.S. Department of Veterans Affairs or the Armed Forces shows the person to be at least 65 percent disabled. To implement that statute, this rule provides for the issuance of an "Oregon Disabilities Hunting and Fishing Permit" by the Department.

(2) To obtain an "Oregon Disabilities Hunting and Fishing Permit," a person shall submit to the Department a completed form specified by the Department. If the completed form accurately provides all required information, the Department shall issue an "Oregon Disabilities Hunting and Fishing Permit". Permits are valid for two calendar years. To renew a permit, the holder must submit a new, updated application form.

(3) The Department may revoke, suspend or decline to issue or renew an "Oregon Disabilities Hunting and Fishing Permit" for failure to submit accurate information. The holder or applicant may request a contested case hearing to appeal such an action.

(4) A person who possesses an Oregon Disabilities Hunting and Fishing Permit issued by the Department is qualified for expanded bag limits as follows:

#### Season/Tag – Bag Limit.

General or controlled buck deer – One deer.

In the following units: Alsea, Biggs, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Heppner, north and west on State Highway 74 to Lexington; north and east on State Highway 207 to Butter Creek Junction; south on Butter Creek Road to Highway 74 at Vinson; west on Highway 74 to Heppner, point of beginning.), Hood, Indigo, Maupin, McKenzie, Melrose, Saddle Mountain, Santiam, Scappoose, Siuslaw, Stott Mountain, Trask, Willamette, Wilson.

General or controlled bull elk – Legal bull or antlerless elk.

In the following units: Alsea, Applegate, Beatys Butte, Beulah, Biggs, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Heppner, north and west State Highway 74 to Lexington; north and east on State Highway 207 to Butter Creek Junction; south on Butter Creek Road to Highway 74 at Vinson; west on Highway 74 to Heppner, point of beginning.), Dixon, Evans Creek, East Fort Rock (that portion east of Hwy 97), Fossil, Grizzly, Hood, Imnaha, Indigo, Juniper, Lookout Mountain, Malheur River, Maupin, McKenzie, Melrose, Murderers Creek, Northside, Ochoco, Owyhee, Paulina, Pine Creek, Rogue, Saddle Mountain, Santiam (within the exterior boundary of Mt. Hood National Forest, antlerless elk cannot be harvested), Scappoose, Silvies, Siuslaw, Sled Springs, Steens Mountain, Stott Mountain, South Sumpter (That part of Unit 51 south of Burnt Rvr Canyon Rd from Durkee to junction State Hwy 245 and Hwy 245 from junction Burnt Rvr Canyon Rd to Unity.), Tioga, Trask, Wagonfire, White River, Whitehorse, Willamette, Wilson.

Controlled pronghorn antelope.

Buck only hunts – One pronghorn.

In the following units: Beatys Butte, Biggs, Columbia Basin, Fort Rock, Grizzly, Juniper, Keating, Lookout Mountain, Malheur River, Maupin, Maury, Murderers Creek, Northside, Ochoco, Paulina, Silver Lake, Silvies, Steens Mountain, Sumpter, Wagonfire, Warner. For hunts with bag limits other than one buck or one bull, the bag limit remains as shown in the Oregon Big Game Regulations.

(5) The Oregon Disabilities Hunting and Fishing Permit is valid only with a general season or controlled bull elk, buck deer, or pronghorn antelope tag for the area and time period being hunted. The permit must be carried on the person while hunting.

(6) An able-bodied companion may accompany a person with an Oregon Disabilities Hunting and Fishing Permit and kill any animal wounded by the permit holder. The wounded animal must be killed using a legal weapon for the season and species designated on the tag. The companion must immediately attach the permit holder's tag to the carcass of the animal. The companion is not required to possess a hunting license or tag.

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

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

Hist.: FWC 29-1987, f. & ef. 6-19-87; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert.

ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; FWC 49-1998, f. & cert. ef. 6-22-98; FWC 92-1999, f. 12-8-99, cert. ef. 1-1-00; FWC 2-2003, f. & cert. ef. 1-17-03; FWC 122-2004, f. 12-21-04, cert. ef. 1-1-05; FWC 53-2005, f. & cert. ef. 6-14-05; FWC 142-2005, f. & cert. ef. 12-16-05; FWC 41-2006, f. & cert. ef. 6-14-06; FWC 42-2007, f. & cert. ef. 6-14-07; FWC 118-2007, f. 10-31-07, cert. ef. 1-1-08; FWC 140-2009, f. 11-3-09, cert. ef. 1-1-10; FWC 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-065-0401

### Deadline for Purchase of General Season Tags

(1) No western Oregon deer rifle tag shall be issued after 11:59 pm, Pacific Time, September 30, 2011.

(2) No deer bow tag shall be issued after 11:59 pm, Pacific Time, August 26, 2011.

(3) No General Season bear tag shall be issued after 11:59 pm, Pacific Time, September 30, 2011.

(4) SW Additional Bear Tags may be purchased anytime during the bear hunting season, after a General Season Bear tag has been purchased. An unused bear tag must be in the hunter's position at the time they are hunting.

(5) No General Season cougar tag shall be issued after 11:59 pm, Pacific Time, September 30, 2011.

(6) Additional Cougar Tags may be purchased anytime during the cougar hunting season, after a General Season Cougar tag has been purchased. An unused cougar tag must be in the hunter's position at the time they are hunting.

(7) No Rocky Mountain Elk Rifle First Season Tag shall be issued after 11:59 pm, Pacific Time, October 25, 2011.

(8) No Rocky Mountain Elk Rifle Second Season Tag shall be issued after 11:59 pm, Pacific Time, November 4, 2011.

(9) No Coast First Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 11, 2011.

(10) No Coast Second Season Elk Tag shall be issued after 11:59 pm, Pacific Time, November 18, 2011.

(11) No Cascade Elk Rifle Tag shall be issued after 11:59 pm, Pacific Time, October 14, 2011.

(12) No elk bow tag shall be issued after 11:59 pm, Pacific Time, August 26, 2011.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; Renumbered from 635-065-0010; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; FWC 1-1999, f. & cert. ef. 1-14-99; FWC 92-1999, f. 12-8-99, cert. ef. 1-1-00; FWC 82-2000, f. 12-21-00, cert. ef. 1-1-01; FWC 121-2001, f. 12-24-01, cert. ef. 1-1-02; FWC 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; FWC 2-2003, f. & cert. ef. 1-17-03; FWC 118-2003, f. 12-4-03, cert. ef. 1-1-04; FWC 122-2004, f. 12-21-04, cert. ef. 1-1-05; FWC 128-2005, f. 12-1-05, cert. ef. 1-1-06; FWC 127-2006, f. 12-7-06, cert. ef. 1-1-07; FWC 70-2007(Temp), f. & cert. ef. 8-13-07 thru 2-9-08; FWC 103-2007(Temp), f. & cert. ef. 9-27-07 thru 3-24-08; FWC 118-2007, f. 10-31-07, cert. ef. 1-1-08; FWC 150-2008, f. 12-18-08, cert. ef. 1-1-09; FWC 140-2009, f. 11-3-09, cert. ef. 1-1-10; FWC 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-065-0625

### Regulations on State Wildlife Areas, Refuges and Special Areas

State wildlife areas, refuges and special areas shall be open to hunting during authorized seasons, subject to the following special regulations and exceptions:

(1) Bear Valley National Wildlife Refuge (Klamath County): Closed to all public entry except walk-in deer hunting prior to November 1.

(2) Bridge Creek Wildlife Area (Umatilla County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Entry is by permit only December 1 through April 14.

(3) Cascade Head – Lincoln City Area: The Cascade Head – Lincoln City Area is closed to hunting with centerfire rifles, muzzleloaders, or handguns. Hunting is restricted to archery and shotguns only during authorized seasons, except for Department approved emergency hunts. Hunters using shotguns for elk shall use slugs (single projectile) only. The Cascade Head – Lincoln City Area boundaries shall be defined as follows: Beginning at the Pacific Ocean and Siletz River mouth, east along the north shoreline of the Siletz River to Drift Cr. Rd. (mile post 1 on Hwy 229); north on Drift Cr. Rd. to Anderson Cr. Rd.; north on Anderson Cr. Rd. to Schooner Cr. Rd.; west on Schooner Cr. Rd. to Forest Rd. 2200; north and east on FR 2200 to FR 1726; west on FR 1726 to FR 2100; northeast on FR

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2100 to the power line crossing; north along the power line to State Hwy. 18; west on Hwy 18 to Old Scenic Hwy 101; north on Old Scenic Hwy 101 to Three Rocks Rd.; west on Three Rocks Rd. to U.S. Hwy 101; north on Hwy 101 to FR 1861; west on FR 1861 to Harts Cove trailhead; west on Harts Cove trail to the Pacific Ocean; south along the coastline to the Siletz River, point of beginning.

(4) Cold Springs Refuge (Umatilla County): The Cold Springs Refuge shall be closed to deer and elk hunting.

(5) Dean Creek Elk Viewing Area (Douglas County): All Bureau of Land Management lands within or contiguous to BLM lands within T22S R11W (including Spruce Reach Island located adjacent to Hwy. 38 and between the outlets of Koapke and Hinsdale Sloughs) are closed to hunting. Also, other lands located with in the following boundary are closed to hunting during all elk and deer seasons that pertain to this area: beginning at the intersection of Schofield Rd. and Hwy. 38, south on Schofield Rd. to it's intersection with Hakki Ridge Rd., east on Hakki Ridge Rd. to the crest of Hakki Ridge, east along the crest of Hakki Ridge to it's intersection with the BLM boundary located in T22S, R11W Section 4, easterly along the BLM boundary to Hwy. 38, west on Hwy 38 to point of beginning.

(6) Denman Wildlife Area (Jackson County): The Denman Wildlife Area shall be open to hunting only during game mammal and game bird seasons. Use of rifles and handguns is prohibited at all times.

(7) Dunes National Recreational Area: Use of rifles and handguns is prohibited for all hunting in that portion of the Siuslaw Unit west of Highway 101 and north of Tahkenitch Creek.

(8) North Bank Habitat Management Area (NBHMA; previously known as the Dunning Ranch Area in Douglas County): 6,500 acres located approximately eight miles northeast of Roseburg. Area: All BLM lands located in T25S, R5W, Sections 35,36; T26S, R5W, Sections 1,2,11,12,13,14; T25S, R4W, Sections 31,32,33; T26S, R4W, Sections 4,5,6,7,8,18. This area is closed to all big game hunting except for and during controlled hunts specific to the management area NBHMA by hunters possessing a controlled hunt tag for the area. Elk hunting will be allowed by hunters who possess a valid NBHMA controlled hunt tag in addition to a valid elk tag. The use of bait for hunting game mammals is prohibited on NBHMA. All BLM lands located in T25S, R5W, Sections 35, 36; T26S, R5W, Sections 1, 2, 11, 12, 13, 14; T25S, R4W, Sections 31,32, 33; T26S, R4W, Sections 4, 5, 6, 7, 8, 18 (6,500 acres located approximately 8 miles northeast of Roseburg).

(9) E.E. Wilson Wildlife Area (Benton County): This area is open to deer hunting during authorized seasons, except closed to bow hunting for deer when juvenile pheasant hunts are in progress. Rabbit hunting is permitted from November 1 through February each year. Hunting is by permit only. Permits are available at area headquarters and shall be filled out and returned each day hunted. Use of rifles, handguns, and crossbows shall be prohibited at all times.

(10) Elkhorn Wildlife Area (Baker/Union counties): Closed to all entry December 1 through April 10 annually. The Roth Tract is closed to all hunting. The Roth Tract is closed to public entry except by entry permit; an entry permit is required at all times of the year.

(11) Enterprise Wildlife Area (Wallowa County): Open to hunting seven days a week. No entry permit is required. Posted portions of the area lying south of the Union Pacific Railroad line and the entire Marr Tract are closed to all hunting.

(12) Fern Ridge Wildlife Area (Lane County): Open to black-tailed deer hunting during authorized seasons; see current Oregon Game Bird Regulations for open areas. A free daily hunting permit is required for East Coyote, West Coyote, Fisher Butte, Royal Amazon and Kirk Park units. Permits are available at check stations located at area access points. Hunters are limited to shotguns and archery equipment only. The discharging of rifles and handguns within the wildlife area is prohibited.

(13) William Finley National Wildlife Refuge (Benton County):

(a) Portions of the refuge shall be open to deer hunting August 27 through September 25, 2011 under the regulations for bowhunting seasons.

(b) Portions of the refuge are open to deer hunting by hunters with a 615 controlled hunt tag using only archery equipment during September 1–September 26, 2011 and using shotguns or archery from September 27–October 31, 2011.

(c) Portions of the refuge shall be open to deer hunting October 1 through October 31, 2011 under regulations for the general western Oregon deer buck season. Use of rifles or muzzleloaders is prohibited.

(d) All hunters shall obtain a refuge permit and check in and out of the refuge daily. Information on open areas and special regulations are available at the refuge.

(14) Gods Valley Wildlife Area (Clatsop County): Vehicles shall be restricted to travel only on county roads.

(15) Government Island State Recreation Area (Multnomah County): Use of rifles, handguns, and shotguns with slugs or buckshot, and bows is prohibited at all times.

(16) Irrigon, Coyote Springs, Power City, and Boardman wildlife management areas (Morrow and Umatilla counties): Use of rifles and handguns is prohibited at all times.

(17) Hart Mountain National Antelope Refuge (Lake County): Portions of the refuge shall be open for hunting as prescribed under chukar season, controlled pronghorn antelope and bighorn sheep hunts, deer bowhunting season, and muzzleloader deer season. The refuge is open for pronghorn antelope Mandatory Reporting Incentive tag holders, and pronghorn antelope and bighorn sheep auction and raffle tag holders but is closed for Access and Habitat deer and elk auction and raffle and Mandatory Reporting Incentive tag holders.

(18) Heppner Regulated Hunt Area: bowhunting; open fires and camping prohibited in posted areas. Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27 and 28 East;

(19) Jewell Meadows Wildlife Area (Clatsop County): The Beneke Tract and the Humbug Tract shall be open to hunting only during authorized game mammal and game bird seasons. The Beneke Tract is closed to all public entry during any open Saddle Mountain elk season. It is unlawful to shoot rifles and bows from or across open fields during any open Saddle Mountain Unit or Wilson Unit elk seasons. The Fishhawk Tract is closed to public access. Posted lands of Cavenham Forest Industries, Inc., in T5N, R7W, Sections 2, 3 and 4, 9, 10 and 11 and T6N, R7W, Sections 33 and 34, are closed to all hunting. All areas posted as Refuge are closed to public access. Entry for other purposes is only by permit obtained at the Jewell Wildlife Area Headquarters.

(20) John Day Fossil Beds National Monument: Those parts of the National Monument in the Grizzly, Biggs, Fossil, and Northside Units are closed to all hunting and trapping.

(21) John Day River Refuge: Includes all land within 1/4 mile of the John Day River mean high water line from the Columbia River upstream to Thirty Mile Creek. Within this area, from the Columbia Rvr upstream to Rock Cr, the area shall be open to hunting of upland game birds during authorized seasons only between September 1 and October 31 annually but closed to all waterfowl hunting. The remaining area from Rock Cr upstream to Thirty Mile Cr is open to the hunting of all game birds during authorized seasons. Hunting of big game is allowed during authorized seasons.

(22) Klamath Wildlife Area (Klamath County): This area is closed to all deer hunting.

(23) Klamath Marsh National Wildlife Refuge: This area is closed to all deer and elk hunting.

(24) Ladd Marsh Wildlife Area (Union County): All land north and east of Foothill Road is closed to all deer and elk hunting except during controlled youth deer hunts and closed to all rifle and handgun shooting. All lands west of Foothill Road shall be closed to all entry February 1 – March 31, except by permit.

(25) Long Ranch (Linn County): Forty-eight acres in T13S, R4E, and S32 are closed to all hunting.

(26) Lost Valley Ranch RHA: Open to public access and hunting from August 1 to March 31. Camping, horse back riding, and open fires are prohibited. Closed to all motor vehicle use unless posted otherwise. (Approximately 9 square miles in T5 and 6S, and R22 and 23E).

(27) Lower Deschutes Wildlife Area: Open to hunting big game, game birds, and waterfowl during authorized seasons. Discharge of firearms prohibited the remainder of the year. Access by foot, boat or bicycle only.

(28) Malheur National Wildlife Refuge (Harney County): Portions of the refuge in Blitzen Valley lying west of State Highway 205 is open during authorized rifle and bow deer and pronghorn antelope seasons.

(29) McDonald Forest-Dunn Forest Area (Benton County): The area is closed to all hunting except during controlled hunts as authorized by the commission.

(30) McKay Creek Refuge (Umatilla County): This refuge is closed to deer and elk hunting.

(31) Metolius Wildlife Refuge (Jefferson County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within T12 and T13S, R9E, bounded by USFS road 1420 and 1419 on the west; road 1400 on the south and east; and road 1420-400, Metolius River, and posted boundary from the Metolius River to road 1400 on the north (approximately five square miles). 36 CFR 261.58(v).

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(32) Mill Creek Watershed (Umatilla County): This watershed is closed to all access and hunting except by holders of a Mill Creek Watershed controlled elk tag and a Forest Service entry permit.

(33) Newberry Crater Wildlife Refuge (Deschutes County): All hunting, injuring, taking, killing, or destroying any wild bird or mammal is prohibited on public lands within the rim of Newberry Crater in: T21S, R12E; T22S, R12E; T21S, R13E; T22S, R13E (approximately 15 square miles).

(34) Rimrock Springs Wildlife Area (Grizzly Unit): This area is closed to all hunting.

(35) Rogue River Area:

(a) All land within one mile of the Rogue River between Grave Creek and Lobster Creek is closed to bear hunting.

(b) All land within 1/4 mile of the Rogue River in the wild river section from Grave Creek downstream to Watson Creek is closed to all hunting except during authorized seasons.

(36) Saddle Mountain Unit (White-tailed Deer Area): That portion of Saddle Mountain Wildlife Unit north of Burlington Northern railroad tracks to Astoria is closed to all deer hunting.

(37) Sauvie Island Wildlife Area (Multnomah-Columbia counties): This area shall be open to bowhunting for black-tailed deer August 27 through September 25, 2011, except Oak Island (Multnomah-Columbia Cos) is closed to deer hunting and Sturgeon LK Refuge is closed to all hunting. Daily permits are required. Hunters shall check in and out daily. This area shall be closed to deer hunting after September 25, 2011. Closed to hunting for furbearers, predators, unprotected and protected wildlife (except black-tail deer, rabbit, and game birds). Use of rifles, handguns and crossbows shall be prohibited at all times. Parking permits are required.

(38) Phillip W. Schneider Wildlife Area (Grant County): Open to public access and hunting April 15 through January 31. Motorized vehicle travel restricted to open roads. Some roads closed seasonally from December 1 through April 14. Entry by permit only February 1 through April 14 including BLM land within the exterior boundaries of the Wildlife Area.

(39) Snake River Islands (Malheur County): Closed to hunting with centerfire rifles and centerfire handguns.

(40) South Slough National Estuarine Reserve: Specific areas are closed to hunting due to public health and safety. Contact reserve headquarters office for specific closures.

(41) Starkey Experimental Forest Enclosure (Union County): That portion of The Starkey Experimental Forest within the eight foot high elk-proof fence enclosure is closed to all hunting during deer and elk season except for persons possessing a controlled hunt tag for the area. A posted 1/4 mile buffer zone on the National Forest lands surrounding the enclosure is closed to all hunting with a centerfire rifle or bow. The enclosure is open to deer and elk hunting only by permit during controlled hunts. The main study area is open to hunting of other species during authorized seasons. The 12-foot right-of-way along each side of all eight foot-high perimeter and internal game fences is closed to all motorized travel. Public entry is allowed only through the main gate. The Experimental Forest is closed to all public entry during the winter closure, which runs from the day after the controlled antlerless elk hunt until May 1 annually. Access and Habitat auction or raffle tag holders are not eligible to hunt in the Starkey Experimental Forest enclosure.

(42) Summer Lake Wildlife Area (Lake County): Open to public access and hunting during authorized mule deer and game bird hunting seasons. Closed to deer hunting during any pheasant, quail or waterfowl hunting seasons east of state Hwy 31 and posted refuge areas are closed to hunting. Motorized vehicle travel restricted to open roads. Some roads may be closed seasonally from March 15–August 15 and seven days prior to and during waterfowl hunting seasons. Hunters must obtain a daily hunting permit and check out at the end of the day. Permits and Area maps are available at Headquarters (1.3 mi. south of the town of Summer Lake). It is unlawful to discharge firearms except during deer and game bird hunting seasons or by permit. Centerfire rifles and handguns are prohibited for deer hunting.

(43) Umatilla Refuge (Morrow County): This refuge is closed to deer and elk hunting except during controlled hunts specific to the refuge and emergency hunts as provided in OAR chapter 635, division 078.

(44) Wallowa Lake (Wallowa County): All land on or within 1/4 mile of the Wallowa River from Wallowa Lake upstream to the falls and within 1/4 mile along the west side of Wallowa Lake from the Wallowa Lake State Park to the Wallowa River outlet is closed to all big game hunting.

(45) Wenaha Wildlife Area (Union County): Open to public access and hunting. Motorized vehicle travel restricted to open roads.

(46) Willamette River Greenway Corridor: Hunting is permitted with shotguns or bows and arrows only during authorized season on Willamette

River Greenway parcels, except in those parcels where hunting is prohibited.

(47) White River Wildlife Area: Open to hunting during authorized seasons.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 94-1988(Temp), f. & cert. ef. 9-19-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. & cert. ef. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-065-0700

### Rifles

Hunters shall only use:

(1) Any .24 caliber or larger centerfire rifle that is not fully automatic to hunt bighorn sheep, Rocky Mountain goat, or elk. Semiautomatics shall have a magazine capacity of no more than five cartridges.

(2) Any centerfire rifle .22 caliber or larger that is not fully automatic to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer. Semiautomatics shall have a magazine capacity of no more than five cartridges.

(3) Any rifle that is not fully automatic to hunt western gray squirrels.

(4) For hunting seasons designated as rifle hunts, hunters shall use only firearms or bows and arrows legal for that species:

(a) A person hunting deer with either a western Oregon deer rifle tag or eastern Oregon deer rifle tag shall use a legal centerfire or muzzleloading rifle, or shotgun, or centerfire handgun, or bow.

(b) A person hunting elk with any elk rifle tag shall use a legal centerfire or muzzleloading rifle, or shotgun, or centerfire handgun, or bow.

(5) Hunters shall not use military or full metal-jacket bullets in original or altered form.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 21-1982, f. & ef. 3-31-82; FWC 37-1982, f. & ef. 6-25-82; FWC 15-1983, f. & ef. 4-19-83; FWC 28, f. & ef. 7-8-83; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-065-0705

### Muzzleloading Rifles

During controlled muzzleloader only seasons:

(1) Hunters shall use any long gun that:

(a) Is fired from the shoulder;

(b) Is loaded from the muzzle;

(c) Has an open ignition system;

(d) Is a single shot except for muzzleloading shotguns that may be double barreled;

(e) Scopes (permanent or detachable), and sights that use batteries, artificial light or power, are not allowed during muzzleloader-only seasons or during 600 series hunts where there is a weapon restriction of "shotgun/muzzleloader only" or "archery/muzzleloader only". However, this restriction does not apply to a visually impaired hunter who has a visual acuity of  $\leq 20/200$  with lenses or visual field of  $\leq 20$  degrees, provided that the hunter holds an Oregon Disabilities Hunting and Fishing Permit. Open and peep sights made from alloys, plastic, or other materials that do not have the properties described above are legal. Open or iron sights that make use of fiber optics or fluorescent paint are also legal.

(2) Only conical lead or lead alloy bullets with a length that does not exceed twice the diameter and lead or lead alloy round balls used with cloth, paper or felt patches are allowed during muzzleloader-only season and 600 series hunts where there is a weapon restriction of shotgun/muzzleloader only or archery/muzzleloader only. It is illegal to hunt



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with non-lead bullets, jacketed bullets, sabots and bullets with plastic or synthetic bases.

(3) Hunters shall use only flint or percussion caps as a source of ignition.

(4) Hunters shall use only loose or granular black powder or black powder substitutes as propellants.

(5) Any .40 calibers or larger muzzleloader as described in OAR 635-065-0705(1)–(4) to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(6) Any .50 caliber or larger muzzleloader as described in OAR 635-065-0705(1)–(4) to hunt bighorn sheep, Rocky Mountain goat, or elk.

(7) Hunters shall use only number 1 or larger buckshot or bullets as described in OAR 635-065-0705(2) for hunting deer, black bear or cougar (mountain lion).

(8) Hunters shall use only single projectiles as described in OAR 635-065-0705(2) for hunting pronghorn antelope, elk, bighorn sheep, or Rocky Mountain goat.

(9) Hunters may only use a legal muzzleloading firearm as described in OAR 635-065-0705. During centerfire firearms seasons where muzzleloaders are also a legal firearm, hunters may:

(a) Use any .40 caliber or larger muzzleloading firearm to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(b) Use any .50 caliber or larger muzzleloading firearm to hunt bighorn sheep, Rocky Mountain goat, or elk.

(c) Use any muzzleloader ignition type (excepting matchlock), any sight, any propellant, or any bullet type.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 21-1982, f. & ef. 3-31-82; FWC 37-1982, f. & ef. 6-25-82; FWC 15-1983, f. & ef. 4-19-83; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 21-1985, f. & ef. 5-7-85; FWC 43-1985, f. & ef. 8-22-85; FWC 11-1987, f. & ef. 3-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-065-0740

### Hunting Prohibited

It is unlawful:

(1) To hunt with a centerfire or muzzleloading rifle during eastern Oregon controlled buck season (October 1–October 12, 2011) Cascade bull elk season, Coast bull elk seasons, Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (November 19–November 27, 2011) without a valid, unused tag for that species, time period and area on their person. EXCEPTION:

(a) Landowners, or their agent, hunting predators on lands they own or lease may use centerfire or muzzleloading rifles to hunt on such lands.

(b) Hunters may use .22 caliber or smaller centerfire rifles for hunting coyotes (Canis latrans) in the Juniper, Beatys Butte, East Beulah, Whitehorse and Owyhee units and in the Wagontire Unit south of the Lake County Road 5–14 during Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (November 19–November 27, 2011).

(c) Hunters who have a tag for one of the hunts listed in this paragraph may hunt bear and/or cougar within the time period and area for which their deer or elk tag is valid provided they have a valid unused bear and/or cougar tag.

(2) To hunt on any refuge closed by the state or federal government.

(3) To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(4) Notwithstanding section (3) of this rule, controlled antlerless elk hunts are permitted within the south city limits of Seaside if the herd should become a serious problem.

(5) To hunt game mammals outside any area designated by a controlled hunt tag when such tag is required for that hunt season.

(6) To hunt in any Safety Zones created and posted by the Department.

(7) To hunt protected wildlife except:

(a) by a permit or during an authorized season established by the commission.

(b) That crow, blackbirds, cowbirds, and magpies may be taken under Federal regulations for reason of depredation or health hazards as described in the Code of Federal Regulations.

(8) To pursue or assist another to pursue a cougar (mountain lion) during an authorized cougar (mountain lion) season unless in possession of an unused cougar (mountain lion) tag or accompanied by the holder of an unused cougar (mountain lion) tag which is valid for that area and time period.

(9) To engage in computer-assisted hunting (Internet hunting) or provide or operate facilities for computer-assisted hunting in Oregon. As used in this act, "computer-assisted hunting" (Internet hunting) means the use of a computer or any other device, equipment, or software to remotely control the aiming and discharge of a firearm, bow, or any other weapon to hunt any game bird, wildlife, game mammal, or other mammal, and "facilities for computer-assisted remote hunting" means real property and improvements on the property associated with hunting, including hunting blinds, offices and rooms equipped to facilitate computer-assisted remote hunting. Nothing in subsection (9) of this section prohibits the use computer-assisted hunting by employees or agents of county, state or federal agencies while acting in their official capacities.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-065-0760

### Other Restrictions

It is unlawful:

(1) To take or hold in captivity the young of any game mammal.

(2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.

(3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.

(4) To resist game law enforcement officers.

(5) To refuse inspection of any license, tag or permit by an employee of the Department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his or her land while on that property.

(6) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.

(7) To disturb, damage, remove, alter or possess any official Department signs.

(8) To sell, lend, or borrow any big game tag.

(9) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. "Motor-propelled vehicle" includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below. There are two methods of posting road access information; 1. signs showing road closed, or 2 round green reflectors marking roads open to motorized travel. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:

(a) North Coast Access Area: Three days prior to opening of general archery season through the close of all bull elk rifle seasons. – Applies to all gated, posted, and/or barrier closed roads within the Saddle Mountain, Scappoose, Trask and Wilson wildlife management units. Cooperators require: day use only on private lands, no ATV use on private and designated state lands, no vehicle may block any road gate.

(b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons – That part of the Trask Unit as follows: 60 square miles in Townships 1 and 2 North and 1 South, and Ranges 5 and 6 West;

(c) Rickreall Regulated Hunt Area: November 1 through November 30 annually – That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;

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- (d) Luckiamute: Permanent Closure – Those parts of the Stott Mt. /Alesa Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.
- (e) Mid-Coast: Permanent Closure – That part of the Alesa Unit as follows: Open roads in the Siuslaw NF lands south of US Hwy 20 and north of State Hwy 126 are designated on the Siuslaw NF Motor Vehicle Use Map. However; additional roads may be posted as closed as part of the Cooperative TMA or for administrative purposes.
- (f) Smith Ridge: Permanent Closure – That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;
- (g) Chucksney Mountain: September 1 through November 30 annually – That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;
- (h) Skookum Flat: Permanent Closure – That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;
- (i) Eagle Creek: Three days prior to opening of general Cascade elk season through close of general Cascade elk season. That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5 1/2 and 6 East;
- (j) Scott Creek: Permanent Closure – That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;
- (k) Wendling: opening of archery season through the late archery season. That part of the McKenzie Unit as follows: approximately 130 square miles NE of Springfield (north of Hwy 126, east of Marcola Rd, and south of the Mohawk River Mainline).
- (l) Coos Bay BLM: Permanent Closure – That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.
- (m) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season – That part of the Rogue Unit as follows: High Cascades Ranger District, Rogue River National Forest;
- (n) Jackson: Three days prior to the general Cascade elk season through April 30 annually – That part of the Rogue, Dixon, and Evans Creek units as follows: 104 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;
- (o) Pokegama: November 20 through March 31 annually – That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;
- (p) Lower Klamath Hills: Permanent Closure – That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;
- (q) Goodlow Mountain Area Closure: December 1 through March 31 annually – That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;
- (r) Sun Creek: November 1 through June 30 annually – That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;
- (s) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season – That part of the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;
- (t) Timbers: Permanent Closure – That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;
- (u) Rager: Three days prior to the opening of controlled buck deer rifle season through the close of antlerless elk rifle season – That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.
- (v) White River Wildlife Area: December 1 through March 31 annually – That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;
- (w) Lower Deschutes: Permanent Closure – That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloan;
- (x) Murderers Creek-Flagtail: Three days prior to the opening of the archery deer and elk seasons through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;
- (y) Camp Creek: Three days prior to opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.
- (z) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27, and 28 East;
- (aa) Bridge Creek Wildlife Area: December 1 through April 14 annually except by permit – That part of the Ukiah Unit as follows: 20 square miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;
- (bb) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;
- (cc) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season and May 1 through June 30 encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;
- (dd) Dry Beaver/Ladd Canyon: Permanent Closure – That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;
- (ee) Clear Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season – That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;
- (ff) Trail Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season – That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;
- (gg) Indian Creek-Gorham Butte: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season – That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;
- (hh) Elkhorn Wildlife Area: Permanent Closure – Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;
- (ii) Starkey Experimental Forest Enclosure: Permanent Closure – That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;
- (jj) Hall Ranch: Three days prior to the opening of Rocky Mountain bull elk first season through April 30 – that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;
- (kk) Little Catherine Creek: Three days prior to opening of archery season through May 31 – That part of the Catherine Creek Unit as follows: 22 square miles in Townships 3, 4 and 5 South, Ranges 40 and 41 East;
- (ll) Walla Walla: Permanent Closure – Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.
- (mm) Wenaha Wildlife Area: Permanent Closure – That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;
- (nn) Noregaard: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit.
- (oo) Shamrock: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. – That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;
- (pp) Chesnimnus: Three days prior to Chesnimnus rifle bull season through end of Chesnimnus rifle bull season – That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;
- (qq) Cemetery Ridge Road: Permanent Closure – That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 3 North, and Range 48 East.

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(rr) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons – 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(ss) Grouse-Lick Creeks: Three days prior to opening of Rocky Mountain bull elk first season through the close of Rocky Mountain bull elk second season- That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(tt) Clear Lake Ridge: Three days prior to opening of archery season through December 1 annually – That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(uu) Mehlor: Permanent Closure: That part of the Pine Creek and Keating Units as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(vv) Lake Fork-Dutchman: Three days prior to opening of archery season to the end of all elk rifle seasons and from May 1 to July 1 – That part of the Pine Creek Unit as follows: 42 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(ww) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons and from May 1 to July 1 – That part of the Pine Creek Unit as follows: 20 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(xx) Summit Point: Permanent Closure: That part of the Keating Unit as follows: 14 square miles in Townships 6 and 7 South, Ranges 44 and 45 East.

(yy) Eagle Creek: December 1 – April 15: That part of the Keating Unit as follows: 17 square miles in Townships 7 and 8 South, Range 44 and 45 East;

(zz) Conroy Cliff: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(aaa) Devine Ridge-Rattlesnake: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(bbb) Dairy Creek: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(ccc) Burnt Cabin: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season – That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(ddd) Walker Rim: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season – That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(eee) North Paunina: Permanent Closure – That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(fff) Sugarpine Mountain: Permanent Closure – That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East;

(ggg) Stott Mt.-North Alsea: One day prior to opening of archery season through the bull elk rifle seasons – All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use only on private lands, no ATV use on private lands and designated state lands, no vehicle may block any road or gate. Access may be closed during extreme fire danger;

(hhh) Spring Butte: Permanent Closure – That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(iii) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Posted and gated roads north of 46 roads in Chesnimnus Unit are closed;

(jjj) Hells Canyon National Recreation Area: Permanent Closure – Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Willowa County that are closed by the National Recreation Area;

(kkk) PO Saddle Road – Three days prior to opening of archery season through June 15th, annually – Three miles of road in Townships 3 and 4 South, Range 48 East.

(lll) Whiskey Creek – Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the last antlerless elk season. That part of the Sled Springs unit as follows – 45 square miles in Townships 2 and 3 North, Ranges 43, 44, and 45 East.

(mmm) South Boundary: Permanent Closure – That part of the Ochoco Unit as follows: 47 square miles in Townships 15 and 16 South, Ranges 20, 21, and 22 East.

(nnn) Wendling: One day prior to opening of archery season through Western Oregon General Firearms Deer Season including youth days. That part of the Mckenzie Unit as follows: approximately 130 square miles NE of Springfield (north of Hwy 126, east of Marcola Rd, and south of the Mohawk River Mainline).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. 12-4-03, cert. ef. 6-16-04; DFW 125-2004, f. 12-21-04, cert. ef. 6-1-05; DFW 133-2005, f. 12-1-05, cert. ef. 6-1-06; DFW 128-2006, f. 12-7-06, cert. ef. 6-1-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-066-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 66 incorporates, by reference, the requirement for black bear hunting set out in the document entitled “2011 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2011 Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-067-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 67 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled “2011 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2011 Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 60.



# ADMINISTRATIVE RULES

Permitted weapons and ammunition are established in OAR chapter 635, division 65. Controlled hunt tag numbers for 2010 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 67 by reference.

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

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

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

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

Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 85-2010(Temp), f. & cert. ef. 6-21-10 thru 12-17-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-072-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 72 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled "2011 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2011 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western gray squirrel. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 118-2007, f. 10-31-07, c. cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-073-0076

### Late Western Oregon Bowhunting Seasons

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

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

Hist.: DFW 83-2010, f. & cert. ef. 6-15-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-075-0001

### Eligibility

A landowner as defined in OAR 635-045-0002 and immediate family as defined in 635-045-0002, owning 40 or more contiguous acres are eligible to receive landowner hunting preference tags for controlled 600 series deer, western Oregon buck deer, western Oregon elk, and eastern Oregon antlerless elk hunts and emergency hunts occurring on their property. To be eligible to receive landowner hunting preference tags for controlled eastern Oregon buck deer, eastern Oregon bull elk, either-sex elk hunts, and doe/fawn pronghorn antelope hunts (pronghorn antelope with horns shorter than ears), occurring on their land, a landowner shall own 160 or more contiguous acres. For controlled hunts see OAR divisions 67, 68, 69, 70, 71, 73, and Emergency Hunts in OAR division 78. Tags issued to landowners are in addition to the number of tags issued to the public and authorized in OAR divisions 67, 68, 69, 70, 71, 73, and 78, except as described in 635-075-0020.

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

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

Hist.: FWC 35-1982, f. & ef. 6-7-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 48-1987, f. & ef. 7-6-87; FWC 20-1988, f. & cert. ef. 3-10-88; FWC 45-1988, f. & cert. ef. 6-13-88; FWC 98-1988, f. & cert. ef. 10-6-88; FWC 22-1989, f. & cert. ef. 3-28-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 99-1992, f. & cert. ef. 9-25-92; FWC 10-1994, f. & cert. ef. 2-24-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 7-1996, f. & cert. ef. 2-12-96; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-075-0010

### Hunting Area Allowed With Landowner Hunting Preference Tags

(1) A landowner preference tag authorizes the recipient to hunt only on those lands owned and registered in the Landowner Preference Program by the landowner, and meeting the minimum acreage requirements for that hunt, during the season dates for which the tag is valid, except as provided for in OAR 635-075-0010(4) and (5).

(2) Landowner hunting preference tags are valid on the landowner's registered property in other controlled hunt areas provided the species, bag limits, and season dates are the same, and the landowner's property in that area either:

(a) Meets the minimum acreage requirements for that hunt; or

(b) is contiguous to other property owned and registered by the landowner that, if added together, would meet the minimum acreage requirements for that hunt.

(3) A landowner receiving a landowner preference controlled buck deer hunt or controlled elk hunt tag may not hunt in any other controlled or general buck deer or elk season, except as provided in OAR division 090.

(4) When a landowner is qualified under landowner preference rules adopted by the Commission and the landowner or an immediate family member receives a deer or elk controlled hunt tag for that unit and has not harvested an animal, the landowner or immediate family member may use that tag to take an antlerless deer, except for white-tailed deer in Western Oregon, or elk before, during, or after the hunting season for which the tags are valid, when approved by the Department, to alleviate damage that is presently occurring to the landowner's property.

(5) Each unfilled landowner preference deer or elk tag may be transferred and used to take two antlerless animals, except for white-tailed deer in Western Oregon, before, during or after the hunting season for which the tags are valid, when approved by the Department, to alleviate damage that is presently occurring to the landowner's property in accordance with the following criteria:

(a) Transfer must be done by an authorized representative of the Department for no charge;

(b) Tag(s) is/are to be transferred to someone of the landowner's choice;

(c) The landowner and those receiving a transferred elk tag must surrender any original unfilled elk tag; or sign an affidavit stating the tag has been lost, stolen, or destroyed;

(d) No more than one tag may be transferred to any one person;

(e) Each tag may only be transferred once;

(f) Tags shall be issued for a period of no more than 30 days from the date of issuance, and end no later than March 31. A Department representative may reauthorize an unfilled tag to the same person for an additional 30 days if damage is presently occurring;

(g) Persons who have been successful in harvesting a buck and/or antlerless deer in a general and/or controlled hunt season (excluding "left-over" tags) are also eligible to receive one damage landowner preference deer tag in a fiscal year of July through June;

(h) Only persons who have not been successful in harvesting an elk in a general or controlled hunt season are eligible to receive one damage landowner preference elk tag in a fiscal year of July through June;

(i) Department personnel shall verify that the person(s) receiving tag(s) has a valid hunting license and has not been successful in harvesting an elk during current general or controlled seasons.

(j) Department personnel shall collect the appropriate fee for the second tag at time of transfer;

(6) Landowner preference pronghorn antelope tags may only be used during the authorized hunt season.

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

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

Hist.: FWC 35-1982, f. & ef. 6-7-82; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 48-1987, f. & ef. 7-6-87; FWC 20-1988, f. & cert. ef. 3-10-88; FWC 45-1988, f. & cert. ef. 6-13-88; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 99-1992, f. & cert. ef. 9-25-92; FWC 10-1994, f. & cert. ef. 2-24-94; FWC 5-1995, f. & cert. ef. 1-23-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-080-0016

### Santiam Unit

The Santiam Unit, number 16, is that area beginning at Lebanon; north on Brewster Road to Lacombe Road; east on Lacombe Road to Kowitz Road; north on Kowitz Road to Baptist Church Drive; west on Baptist Church Drive to Richardson Gap Road; north on Richardson Gap Road to State Highway 226; northeast on State Highway 226; west on State Highway 22 to Cascade Highway near Stayton; north on Cascade Highway

# ADMINISTRATIVE RULES

to State Highway 213 at Silverton; northeast on State Highway 213 to State Highway 211; northeast on State Highway 211 to Sandy; north on Teneyck Road to Sandy River; northwest down Sandy River to state line in Columbia River; northeast along state line to Multnomah-Hood River County line; southeast along Multnomah-Hood River County line to Lolo Pass; southeast along Pacific Crest Trail to Barlow Pass; west on Highway 35 to Highway 26; southeast on Highway 26 to junction of Highway 216; west and then south along the west boundary of The Confederated Tribes of Warm Springs Indian Reservation of Oregon (CTWSRO) (McQuinn Strip line) to summit of Mt. Jefferson; south along the west CTWSRO boundary and the Cascade crest (Jefferson/Linn Co. line) to the junction of the Pacific Crest National Scenic Trail (PCT) in Township 11 South Range 8 East Sec 17 then south on PCT to U.S. Highway 20/126 at Santiam Pass. PCT west on U.S. Highway 20 to Lebanon; point of beginning. (The McQuinn Strip portion of the White River Unit and the Warm Springs Indian Reservation was closed to public hunting September 21, 1992 until further notice).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 35-1986, f. & ef. 8-7-86; FWC 72-1989, f. & cert. ef. 8-15-89; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-080-0021 Indigo Unit

The Indigo Unit, number 21, is that area beginning at Oakridge; southeast on State Highway 58 to Pacific Crest Trail; south along Pacific Crest Trail to State Highway 138; north and west on State Highway 138 to Toketee junction; north on Toketee Road to North Umpqua River; west along North Umpqua River to Dixonville-Albany main power transmission line; north on Dixonville-Albany main power transmission line to Shoestring Road; east on Shoestring Road .8-mile to London Road; north on London Road and South 6th Street to Interstate Highway 5; north on Interstate Highway 5 to State Highway 58; southeast on State Highway 58 to Oakridge, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 21-1979, f. & ef. 6-5-79; FWC 72-1989, f. & cert. ef. 8-15-89; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-080-0023 Melrose Unit

The Melrose Unit, number 23, is that area beginning at Dixonville power substation; south along Dixonville-Nickel Mountain main power transmission line to Douglas County Rd 1 at a point approximately two miles west of Days Creek; southwest on Douglas County Rd 1 to Canyonville; south on Interstate Highway 5, 3/4-mile to Dixonville-Nickel Mountain main power transmission line; west on Dixonville-Nickel Mountain main power transmission line to Southern Pacific railroad tracks adjacent to the Nickel Mountain Road junction; southwest along SPRR tracks to the Union Creek Road; north on Union Creek Road to Live Oak Cr. Rd.; northeast on Live Oak Cr. Rd. through Horse Prairie and Olalla Creek Road to Ireland Rd.; west on Ireland Rd. to Benedict Rd.; north on Benedict Rd. to Tenmile; north on Reston and Flournoy Valley roads to Melrose; north on Melrose-Umpqua Road to the Umpqua River and Umpqua; north along the Umpqua River to State Highway 38 at Elkton; east on State Highway 38 to Drain; northeast on State Highway 99 to Curtin; northeast on Interstate 5 to South 6th Street, south on South 6th Street to London Road; south on London Road to Shoestring Road; west .8-mile on Shoestring Road to the Albany-Dixonville main power transmission line; south along Albany-Dixonville main power transmission line to Dixonville, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 21-1979, f. & ef. 6-5-79; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

## 635-080-0026 Powers Unit

The Powers Unit, number 26, is that area beginning at Grave Creek Bridge on Rogue River; west on Rogue River to Illahee; north on posted forest road to Powers; northwest on Powers Highway to State Highway 42; east on State Highway 42 to Tenmile; south on Benedict Rd. to Ireland Rd.; east on Ireland Rd. to Olalla Cr. Rd.; south on Olalla Creek Road through Horse Prairie to Live Oak Cr. Rd.; southwest on Live Oak Cr. Rd. to Union Creek Road; northeast on SPRR tracks to Dixonville-Nickel Mountain

main power transmission line adjacent to Nickel Mountain Road; east along main power transmission line to Interstate Highway 5; south on Interstate Highway 5 to Wolf Creek; southwest on Wolf Creek-Grave Creek Road to Grave Creek Bridge, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11

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**Rule Caption:** Adopt temporary rules relating to the export and import of certain cervids originating in Oregon.

**Adm. Order No.:** DFW 169-2010(Temp)

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 1-1-11 thru 6-27-11

**Notice Publication Date:**

**Rules Amended:** 635-049-0025, 635-049-0265

**Subject:** Adopt temporary rules to allow fallow deer that leave Oregon temporarily for educational or display purposes to return to Oregon.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-049-0025

### Import, Export, Transport other than to Licensed Facilities

It is unlawful to import live cervids. However, live fallow deer and reindeer that leave Oregon temporarily for educational or display purposes may return to Oregon upon obtaining any necessary Department of Agriculture permits, provided:

(1) The fallow deer and reindeer have had no contact with other cervids while outside Oregon; and

(2) The Department of Fish and Wildlife is notified each time before the fallow deer and reindeer re-enter Oregon.

(3) The Department of Fish and Wildlife is provided a schedule of off facility locations and dates before the fallow deer and reindeer are transported outside the facility.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Hist.: DFW 52-2008, f. & cert. ef. 5-28-08; DFW 65-2009, f. & cert. ef. 6-10-09; DFW 169-2010(Temp), f. 12-29-10, cert. ef. 1-1-11 thru 6-27-11

## 635-049-0265

### Transport of Cervids Among Licensed Facilities

(1) Cervids held under license may not be transported outside their licensed facility except:

(a) From one Oregon licensed cervid facility to another under a permit issued by the Department. The permit will specify any conditions necessary to protect native wildlife and to ensure safe and humane treatment of the cervids being transported.

(b) While being legally exported from Oregon under a permit issued by the Department, a certificate of veterinary inspection and any import permit or license required by the receiving state.

(c) Elk (legally captured from the wild in Oregon or bred from elk legally captured from the wild in Oregon) to and from an exhibition within Oregon under a permit issued by the Department, on the condition that the elk has no contact with, and will not be held in an area frequented by, any other cervid.

(d) As allowed by OAR 635-049-0025(1)(a) and (b) for fallow deer and reindeer.

(e) To a slaughtering facility.

(2) To obtain a permit, the holder must apply using a form provided by the Department and provide all requested details concerning the proposed transport.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Hist.: DFW 52-2008, f. & cert. ef. 5-28-08; DFW 169-2010(Temp), f. 12-29-10, cert. ef. 1-1-11 thru 6-27-11

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**Rule Caption:** Repeal of rule is imposing deadline for revision of Black Bear Management Plan.

**Adm. Order No.:** DFW 170-2010(Temp)

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 12-29-10 thru 6-27-11

**Notice Publication Date:**

**Rules Amended:** 635-170-0015

# ADMINISTRATIVE RULES

**Subject:** This temporary rule removes the requirements for the Department to review and update the Black Bear Management; allowing additional time for the department to devote toward the plan review.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-170-0015

### Five-Year Review

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 55-1987, f. & ef. 7-23-87; FWC 117-1992, f. & cert. ef. 10-28-92; FWC 25-1993, f. & cert. ef. 3-31-93; DFW 170-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11

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**Rule Caption:** Amend rules related to 2011 Oregon Sport Fishing Regulations.

**Adm. Order No.:** DFW 171-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 7-1-2010

**Rules Amended:** 635-011-0100, 635-013-0003, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-017-0095, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0095, 635-023-0125, 635-023-0128, 635-023-0130, 635-023-0134

**Subject:** Amended rules to adopt changes to the sport fishing regulations for finfish, shellfish, and marine invertebrates for 2011. Housekeeping and Technical corrections were made to ensure rule consistency.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-011-0100

### General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2011 Oregon Sport Fishing Regulations** by reference. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-013-0003

### Purpose and Scope

(1) The purpose of division 13 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures as adopted by the **Pacific Fishery Management Council** in its annual **Ocean Salmon Management Measures and Impacts**, as finalized in April 2010, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**.

(3) This rule also incorporates by reference the **2011 Oregon Sport Fishing Regulations**.

(4) A copy of the **Pacific Fishery Management Council** referenced document and the Federal Regulations may be obtained by contacting the **Pacific Fishery Management Council** at [www.pcouncil.org](http://www.pcouncil.org) or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04;

DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 72-2010, f. & cert. ef. 5-25-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-013-0004

### Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2011 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2011 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2011 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subparts A and H)**.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119  
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129  
Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; Administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; DFW 81-2007(Temp), f. 8-31-07, cert. ef. 9-2-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08; DFW 96-2008(Temp), f. & cert. ef. 8-15-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-014-0080

### Purpose and Scope

(1) The purpose of division 14 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 14 incorporates by reference the **2011 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2011 Oregon Sport Fishing Regulations** in addition to division 11 and division 14 to determine all applicable sport fishing requirements for the Northwest Zone.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119  
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129  
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru



# ADMINISTRATIVE RULES

12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-014-0090

### Inclusions and Modifications

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations** pamphlet.

(2) Notwithstanding all other requirements provided in the **2011 Oregon Sport Fishing Regulations** pamphlet, the following additional rules apply to adult salmon angling in waters of the Northwest Zone:

(a) All waters of the Necanicum River and Tillamook Bay Basin, (including the Miami, Kilchis, Wilson, Trask, and Tillamook rivers) that are open for Chinook salmon are limited to no more than 1 adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone and all state waters terminal area seasons in the Marine Zone with a 10 adult non fin-clipped Chinook salmon seasonal aggregate limit. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31 except in the Nehalem Basin where the seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between July 1 and December 31.

(b) In all waters of the Nehalem River Basin (including the North Fork) and the Nestucca River Basin (including the Little Nestucca and Three Rivers) that are open to Chinook salmon the daily catch limit may include no more than 1 adult non fin-clipped Chinook salmon per day and 2 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone with a 2 adult non fin-clipped Chinook salmon seasonal aggregate limit. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31 except in the Nehalem Basin where the seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between July 1 and December 31.

(c) Within the Nehalem Basin (including the North Fork) the following additional rules apply:

(A) Mainstem (bay) closed to all salmon/steelhead angling seaward from a line extending from Nehalem Bay State Park Boat Ramp to Fishery Point July 1 through September 30 and closed to all Chinook salmon angling upstream of Highway 53 Bridge (RM 5.8) at Mohler September 1 through December 31.

(B) Closed to all Chinook salmon angling above the Miami-Foley Road Bridge July 1 through December 31.

(d) Within the Nestucca Basin (including the Little Nestucca River and Three Rivers) the following rules apply:

(A) Mainstem Nestucca tidewater and bay below Cloverdale Bridge (RM 7.1) closed to all salmon and steelhead angling August 1 through September 15.

(B) Mainstem Nestucca River above Cloverdale Bridge (RM 7.1) closed to all Chinook salmon angling August 1 through September 15. Nestucca bay downstream of ODFW sign at the southern end of Guardrail Hole (aka Fishery Point, Brooten Road MP 4.5): Closed to all salmon/steelhead angling August 1 through December 31.

(C) Three Rivers closed from mouth upstream to hatchery weir deadline July 1 through September 30.

(D) Little Nestucca including all Little Nestucca tidewater: Closed to all Chinook salmon angling August 1 through December 31.

(E) Mainstem Nestucca River upstream of Farmer Creek (RM 12.5) closed to all Chinook salmon angling August 1 through December 31.

(e) In all waters of Salmon River, the Siletz River Basin, and Yaquina River Basin open for Chinook salmon, the daily catch limit may include no more than 1 adult non fin-clipped Chinook salmon per day and 10 adult non fin-clipped Chinook salmon in the seasonal aggregate when combined with all other waters in the Northwest Zone and all state waters terminal area seasons in the Marine Zone with a 10 adult non fin-clipped Chinook salmon seasonal aggregate limit. Seasonal aggregate applies to all adult non fin-clipped Chinook salmon retained between August 1 and December 31.

(A) Siletz River and Bay upstream to Old Mill Park Boat Launch at RM 36.0 open for all coho salmon from September 1 through the earlier of November 30 or attainment of an adult coho salmon quota of 400 non fin-clipped coho salmon.

(B) The catch limit may include one adult non fin-clipped coho salmon for the entire season and one non fin-clipped jack coho salmon per day during periods when retention of non fin clipped adult coho salmon is allowed, and no more than 5 total adult non fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(f) Within the Siletz River Basin the following additional rules apply:

(A) Drift Creek (Siletz River Basin) upstream of the confluence with Quarry Creek at RM 8 is closed for Chinook salmon from August 1 through December 31; and

(B) all waters of the Siletz River (including all tributaries) upstream of Old Mill Park Boat Launch at RM 36.0 are closed for Chinook salmon from August 1 through December 31.

(g)(A) Within the Yaquina River Basin the following additional rules apply:

(B) All waters of the Yaquina River upstream of the confluence of the Yaquina River and Big Elk Creek at RM 18.3 and all waters of Big Elk Creek (Yaquina River Basin) are closed for Chinook salmon from August 1 through December 31; and

(h) Within the Alsea River Basin the following additional rules apply:

(A) All waters of Drift Creek (Alsea River Basin) within the Drift Creek Wilderness Area and upstream are closed for Chinook salmon from August 1 through December 31; and

(B) all waters of the Alsea River upstream of the confluence with Five Rivers at RM 21; and

(C) all waters of Five Rivers are closed for Chinook salmon from October 16 through December 31.

(i) Within the Siuslaw River Basin the following additional rules apply:

(A) All waters of the Siuslaw River upstream of the confluence with Lake Creek at RM 30.0 are closed for Chinook salmon from August 1 through December 31;

(B) All waters of Lake Creek are closed for Chinook salmon August 1 through December 31 and all waters of Lake Creek downstream of Fish Creek are closed to all angling from September 1 through November 30.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 102-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 12-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 44-2010(Temp), f. 4-20-10, cert. ef. 4-21-10 thru 9-30-10; DFW 73-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 9-30-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-

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10; DFW 89-2010(Temp), f. 6-28-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-016-0080

### Purpose and Scope

(1) The purpose of division 16 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 16 incorporates by reference the **2011 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2011 Oregon Sport Fishing Regulations** in addition to division 11 and division 16 to determine all applicable sport fishing requirements for the Southwest Zone.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-016-0090

### Inclusions and Modifications

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other requirements provided in the 2011 Oregon Sport Fishing Regulations, the following restrictions apply to angling in waters of the Southwest Zone:

(a) Within the Coos River Basin the following additional rules apply: All waters of the South Fork Coos River upstream from the head of tide-water at Dellwood at RM 10.0 are closed for Chinook salmon from August 1 through December 31 and closed for steelhead from August 1 through November 14; and

(b) Within the Coquille River Basin the following additional rules apply: Open for non fin-clipped coho salmon in Coquille River and Bay upstream to the Highway 42S bridge (Sturdivant Park) at RM 24.0 from September 1 through the earlier of November 30 or attainment of an adult coho quota of 1,200 non fin-clipped coho. The daily catch limit may include one adult non fin-clipped coho salmon per day and one non fin-clipped jack coho salmon, and no more than 5 total adult non fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone.

(c) Within the Tenmile Lakes Basin the following additional rules apply: Tenmile Lakes (Coos County) upstream from Hilltop Bridge are open for non fin-clipped coho salmon from October 1 through the earlier of December 31 or attainment of an adult coho quota of 500 non fin-clipped coho. The daily catch limit may include one adult non fin-clipped coho salmon per day and one non fin-clipped jack coho salmon, and no more than 5 total adult non fin-clipped coho salmon in the seasonal aggregate from all waters in the Northwest Zone and Southwest Zone. Only one rod per angler may be used while angling for coho. Streams that empty into North and South Tenmile Lakes are not open to coho salmon angling, nor is the canal that connects North and South Tenmile Lakes.

(d) All waters of Floras Creek upstream of the County Road 124 bridge over Floras Creek at RM 5.0 are closed for Chinook salmon between August 1 and December 31.

(e) All waters of the Sixes River upstream of Edson Creek at RM 10.0 are closed for Chinook salmon between August 1 and December 31.

(f) All waters of the Chetco River mainstem upstream of the power-line crossing at RM 2.2 are closed to angling from August 1 through November 5.

(g) All waters of the Winchuck River mainstem, including tidewater, are closed to angling from August 1 through November 5.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC

5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; DFW 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09; DFW 141-2009(Temp), f. 11-4-09, cert. ef. 11-7-09 thru 12-21-09; DFW 143-2009(Temp), f. 11-17-09, cert. ef. 11-19-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 65-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 5-31-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 143-2010(Temp), f. 10-8-10, cert. ef. 10-10-10 thru 12-31-10; DFW 152-2010(Temp), f. 10-27-10, cert. ef. 10-30-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-017-0080

### Purpose and Scope

(1) The purpose of division 17 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 17 incorporates by reference the **2011 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2011 Oregon Sport Fishing Regulations** in addition to division 11 and division 17 to determine all applicable sport fishing requirements for the Willamette Zone.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-017-0090

### Inclusions and Modifications

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the



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harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 35-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 78-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 19-1998, f. & cert. ef. 3-12-98; FWC 25-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; FWC 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; FWC 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; FWC 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 15-1999, f. & cert. ef. 3-9-99; FWC 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; FWC 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; FWC 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; FWC 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; FWC 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; FWC 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; FWC 78-1999, f. & cert. ef. 10-4-99; FWC 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; FWC 96-1999, f. 12-27-99, cert. ef. 1-1-00; FWC 13-2000, f. & cert. ef. 3-20-00; FWC 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; FWC 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; FWC 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; FWC 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; FWC 1-2001, f. 1-25-01, cert. ef. 2-1-01; FWC 6-2001, f. & cert. ef. 3-1-01; FWC 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; FWC 28-2001, f. & cert. ef. 5-1-01; FWC 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; FWC 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; FWC 70-2001, f. & cert. ef. 8-10-01; FWC 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; FWC 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; FWC 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; FWC 123-2001, f. 12-31-01, cert. ef. 1-1-02; FWC 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; FWC 26-2002, f. & cert. ef. 3-21-02; FWC 37-2002, f. & cert. ef. 4-23-02; FWC 42-2002, f. & cert. ef. 5-3-02; FWC 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; FWC 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; FWC 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); FWC 130-2002, f. 11-21-02, cert. ef. 1-1-03; FWC 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; FWC 42-2003, f. & cert. ef. 5-16-03; FWC 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; FWC 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; FWC 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; FWC 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; FWC 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; FWC 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; FWC 125-2003, f. 12-11-03, cert. ef. 1-1-04; FWC 33-2004, f. 4-22-04, cert. ef. 5-1-04; FWC 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; FWC 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; FWC 117-2004, f. 12-13-04, cert. ef. 1-1-05; FWC 24-2005, f. 4-15-05, cert. ef. 5-1-05; FWC 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; FWC 136-2005, f. 12-7-05, cert. ef. 1-1-06; FWC 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; FWC 79-2006, f. 8-11-06, cert. ef. 1-1-07; FWC 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; FWC 32-2007, f. 5-14-07, cert. ef. 6-1-07; FWC 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; FWC 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; FWC 134-2007, f. 12-26-07, cert. ef. 1-1-08; FWC 136-2007, f. 12-31-07, cert. ef. 1-1-08; FWC 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; FWC 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; FWC 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; FWC 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; FWC 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; FWC 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; FWC 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; FWC 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; FWC 156-2008, f. 12-31-08, cert. ef. 1-1-09; FWC 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; FWC 15-2009, f. & cert. ef. 2-25-09; FWC 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; FWC 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; FWC 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; FWC 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; FWC 144-2009, f. 12-8-09, cert. ef. 1-1-10; FWC 61-2010, f. & cert. ef. 5-14-10; FWC 62-2010(Temp), f. 5-14-10, cert. ef. 5-22-10 thru 11-17-10; FWC 84-2010(Temp), f. 6-17-10, cert. ef. 6-18-10 thru 10-31-10; FWC 94-2010(Temp), f. & cert. ef. 7-1-10 thru 10-31-10; FWC 96-2010(Temp), f. 7-7-10, cert. ef. 7-8-10 thru 10-31-10; FWC 123-2010(Temp), f. 8-26-10, cert. ef. 9-1-10 thru 12-31-10; FWC 134-2010(Temp), f. 9-22-10, cert. ef. 9-23-10 thru 12-31-10; FWC 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-017-0095 Sturgeon Season

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of white sturgeon three days per week, Thursday, Friday, and Saturday during the following periods:

(a) January 1 through March 31; and

(b) November 1 through December 31.

(3) The retention of white sturgeon in the areas identified in section (2) of this rule is prohibited April 1 through October 31.

(4) Bank angling is prohibited beginning from the east shore of the Willamette River the entire year in the area beginning west of Highway 99E, at the

northern-most extent of the parking area near the intersection of 8th Street and Highway 99E in Oregon City, approximately 290 feet downstream of the Oregon City/West Linn bridge (Hwy 43) and extending upstream approximately 1715 feet to the retaining wall extending into the Willamette River at the NW corner of the Blue Heron Paper Mill.

(5) Only white sturgeon with a fork length of 38–54 inches may be retained. Retention of green sturgeon is prohibited all year in all areas.

(6) Angling for sturgeon, including catch-and-release, is prohibited seven days per week during May 1 through August 31 from Willamette Falls downstream to the I-205 Bridge.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 90-2010(Temp), f. 6-29-10, cert. ef. 7-5-10 thru 12-31-10; DFW 154-2010(Temp), f. & cert. ef. 11-8-10 thru 12-31-10; DFW 163-2010(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

## 635-018-0080

### Purpose and Scope

(1) The purpose of division 18 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 18 incorporates by reference the **2011 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2011 Oregon Sport Fishing Regulations** in addition to division 11 and division 18 to determine all applicable sport fishing requirements for the Central Zone.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 96-1999, f. 12-27-99, cert. ef. 1-1-00; FWC 1-2001, f. 1-25-01, cert. ef. 2-1-01; FWC 70-2001, f. & cert. ef. 8-10-01; FWC 123-2001, f. 12-31-01, cert. ef. 1-1-02; FWC 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; FWC 125-2003, f. 12-11-03, cert. ef. 1-1-04; FWC 117-2004, f. 12-13-04, cert. ef. 1-1-05; FWC 136-2005, f. 12-7-05, cert. ef. 1-1-06; FWC 79-2006, f. 8-11-06, cert. ef. 1-1-07; FWC 136-2007, f. 12-31-07, cert. ef. 1-1-08; FWC 156-2008, f. 12-31-08, cert. ef. 1-1-09; FWC 144-2009, f. 12-8-09, cert. ef. 1-1-10; FWC 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-018-0090

### Inclusions and Modifications

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**.

[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; FWC 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; FWC 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; FWC 70-1998, f. & cert. ef. 8-28-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 31-1999, f. & cert. ef. 5-3-99; FWC 78-1999, f. & cert. ef. 10-4-99; FWC 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; FWC 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; FWC 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-



# ADMINISTRATIVE RULES

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

## 635-019-0080

### Purpose and Scope

(1) The purpose of division 19 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 19 incorporates by reference the **2011 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2011 Oregon Sport Fishing Regulations** in addition to division 11 and division 19 to determine all applicable sport fishing requirements for the Northeast Zone.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-019-0090

### Inclusions and Modifications

The **2011 Oregon Sport Fishing Regulations** provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & cert. ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 54-2010(Temp), f. 5-6-10, cert. ef. 5-22-10 thru 9-1-10; DFW 95-2010(Temp), f. 7-1-10, cert. ef. 7-11-10 thru 9-1-10; DFW 102-2010(Temp), f. 7-20-10, cert. ef. 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-021-0080

### Purpose and Scope

(1) The purpose of division 21 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 21 incorporates by reference the **2011 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2011 Oregon Sport Fishing Regulations** in addition to division 11 and division 21 to determine all applicable sport fishing requirements for the Southeast Zone.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-021-0090

### Inclusions and Modifications

The **2011 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 53-2009(Temp), f. 5-18-09, cert. ef. 5-30-09 thru 9-1-09; DFW 62-2009(Temp), f. 6-2-09, cert. ef. 6-13-09 thru 9-1-09; DFW 79-2009(Temp), f. 6-30-09, cert. ef. 7-5-09 thru 9-1-09; Administrative correction 9-29-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 52-2010(Temp), f. 4-30-10, cert. ef. 5-1-10 thru 9-30-10; DFW 60-2010(Temp), f. 5-13-10, cert. ef. 5-22-10 thru 9-30-10; DFW 67-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 9-30-10; DFW 78-2010(Temp), f. 6-10-10, cert. ef. 6-11-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-023-0080

### Purpose and Scope

(1) The purpose of division 23 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 23 incorporates by reference the **2011 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2011 Oregon Sport Fishing Regulations** in addition to division 11 and division 23 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

# ADMINISTRATIVE RULES

## 635-023-0090

### Inclusions and Modifications

The **2011 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-00, cert. ef. 6-28-00 thru 7-31-00; DFW 35-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02, cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02, cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72-2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 64-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10; Administrative correction 4-21-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-023-0095

### Sturgeon Season

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to

time, and, to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) The mainstem Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette River upstream to Willamette Falls and Multnomah Channel, is open to the retention of white sturgeon with a fork length of 38-54 inches, three days per week, Thursday, Friday, and Saturday during the following periods:

- (a) January 1 through July 31; and
- (b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

- (a) January 1 through April 30; and
- (b) May 22 through June 26 (or until guideline is met).

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 21, and from June 27 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38-54 inches may be retained.

(7) During the fishing period as identified in subsection (4)(b) of this rule, only white sturgeon with a fork length of 41-54 inches may be retained.

(8) Angling for sturgeon is prohibited from:

(a) Bonneville Dam downstream to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to Washington shore during May 1 through August 31;

(b) From Highway 395 Bridge upstream to McNary Dam; and

(c) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(9) Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(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

## 635-023-0125

### Spring Sport Fishery

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1 through March 31 from the mouth at Buoy 10 upstream to the I-5 Bridge with the following restrictions:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead may be retained.

# ADMINISTRATIVE RULES

(b) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the **2011 Oregon Sport Fishing Regulations**.

(3) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through June 15 it is *unlawful* when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert. ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09; Administrative correction 7-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 23-2010(Temp), f. & cert. ef. 3-2-10 thru 8-27-10; DFW 45-2010(Temp), f. 4-21-10, cert. ef. 4-24-10 thru 7-31-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 55-2010(Temp), f. 5-7-10, cert. ef. 5-8-10 thru 7-31-10; Suspended by DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-023-0128

### Summer Sport Fishery

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the 2011 Oregon Sport Fishing Regulations:

(a) Effective June 16 through July 31 the mainstem Columbia River is open to the retention of adipose fin-clipped jack and adult Chinook salmon from the Astoria-Megler Bridge upstream to the Oregon/Washington border.

(b) The combined daily bag limit for adult salmon and steelhead is two fish. Only adipose fin-clipped fish may be retained.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09; Administrative correction 8-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-023-0130

### Fall Sport Fishery

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2011 Oregon Sport Fishing Regulations**:

(a) Effective August 1 through December 31, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, the combined bag limit for adult Chinook salmon, adipose fin-clipped coho salmon, and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook salmon; except: Retention of Chinook salmon is prohibited during September 1 through December 31;

(b) Effective August 1 through December 31, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam, the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook salmon; except: Retention of Chinook salmon is only allowed during August 1 through September 11 or until the harvest guideline is achieved, in the area bounded by a line projected from the Warrior Rock Lighthouse on the Oregon shore to Red Buoy #4 to a marker on the lower end of Bachelor Island, Washington, downstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 99-2008(Temp), f. 8-22-08, cert. ef. 8-25-08 thru 12-31-08; DFW 104-2008(Temp), f. 8-29-08, cert. ef. 8-31-08 thru 12-31-08; DFW 115-2008(Temp), f. & cert. ef. 9-18-08 thru 12-31-08; DFW 118-2008(Temp), f. 9-24-08, cert. ef. 9-25-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 133-2009(Temp), f. 10-20-09, cert. ef. 10-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 131-2010(Temp), f. 9-21-10, cert. ef. 9-22-10 thru 10-31-10; DFW 145-2010(Temp), f. 10-13-10, cert. ef. 10-15-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

## 635-023-0134

### Snake River Fishery

The **2011 Oregon Sport Fishing Regulations** provide requirements for the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 42-2010(Temp), f. 4-13-10, cert. ef. 4-24-10 thru 7-31-10; DFW 107-2010(Temp), f. 7-26-10, cert. ef. 7-31-10 thru 8-4-10; Administrative correction, 8-18-10; DFW 119-2010(Temp), f. 8-18-10, cert. ef. 9-1-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Establish Average Market Value of Food Fish for Determining Damages Related to Commercial Fishing Violations.

**Adm. Order No.:** DFW 1-2011

**Filed with Sec. of State:** 1-10-2011

**Certified to be Effective:** 1-10-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 635-006-0232

**Subject:** Amended rule to establish the average market value of food fish species used to determine damages for commercial fishing violations.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-006-0232

### Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2010 average market value of food fish species. For species not listed, the aver-



# ADMINISTRATIVE RULES

age market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

- (a) FISH:
  - (A) Anchovy, Northern \$0.11.
  - (B) Cabezon \$3.61.
  - (C) Carp \$0.50 (2006 price).
  - (D) Cod, Pacific \$0.50.
  - (E) Flounder, arrowtooth \$0.10.
  - (F) Flounder, starry \$0.37.
  - (G) Greenling \$4.48.
  - (H) Grenadier \$0.10.
  - (I) Hagfish \$0.63.
  - (J) Hake, Pacific (Whiting) \$0.09.
  - (K) Halibut, Pacific, dressed weight with head on \$4.57.
  - (L) Herring, Pacific \$0.05.
  - (M) Lingcod \$1.30.
  - (N) Mackerel, jack \$0.01 (2008 price), Pacific \$0.12.
  - (O) Opah \$2.98 (2008 price).
  - (P) Pacific ocean perch, \$0.49.
  - (Q) Pollock, Walleye \$0.67 (2001 price).
  - (R) Rockfish:
    - (i) Black, \$2.16.
    - (ii) Blue, \$2.02.
    - (iii) Canary, \$0.48.
    - (iv) Darkblotched, \$0.51.
    - (v) Black and yellow, \$6.54.
    - (vi) Brown, \$4.00.
    - (vii) China, \$6.76.
    - (viii) Copper, \$3.78.
    - (ix) Gopher, \$4.75.
    - (x) Grass, \$7.00.
    - (xi) Quillback, \$4.30.
    - (xii) Shelf, \$1.16.
    - (xiii) Shortbelly, using trawl gear \$0.29 (2003 price), using line and pot gear \$1.96 (2008 price).
    - (xiv) Slope, using trawl gear, \$0.43 using line and pot gear \$0.88.
    - (xv) Tiger, \$4.40.
    - (xvi) Vermilion, \$4.34.
    - (xvii) Widow \$0.49.
    - (xviii) Yelloweye, using trawl gear \$0.52, using line and pot gear \$1.00.
    - (xix) Yellowtail, \$2.52.
  - (S) Sablefish:
    - (i) Dressed weight, ungraded \$3.23, extra small \$3.43, small \$4.68, medium \$5.59 and large \$6.10.
    - (ii) Round weight, ungraded \$2.51, extra small \$1.22, small \$1.96, medium \$2.50 and large \$3.14.
  - (T) Salmon, Chinook, ocean dressed weight: large \$5.50, medium \$5.18, small \$5.03 and mixed size \$5.60.
  - (U) Salmon, coho, ocean dressed weight: mixed size \$2.23.
  - (V) Salmon, pink, ocean dressed weight: ungraded, \$0.33 (2009 price).
  - (W) Sanddab, Pacific \$0.42.
  - (X) Sardine, Pacific \$0.12.
  - (Y) Shad, American:
    - (i) Coast, ungraded, gill net and set net, \$0.30 (2003 price).
    - (ii) Columbia, ungraded \$0.39.
  - (Z) Shark, blue \$0.51, Pacific sleeper \$0.62 (2000 price), shortfin mako \$1.50 (2009 price), sixgill \$0.05 (2007 price), soupfin \$1.00, spiny dogfish \$0.29, scalloped hammerhead \$0.12 (2001 price), silky \$0.18 (2001 price), thresher dressed weight \$1.50 (1995 price) and round weight \$0.60, and other species \$0.02.
  - (AA) Skates and Rays \$0.26.
  - (BB) Smelt, Eulachon (Columbia River), \$2.86 and other species \$0.20 (2010 price).
  - (CC) Sole, butter \$0.32, curlfin (turbot) \$0.31, Dover \$0.31, English \$0.30, flathead \$0.30, petrale \$1.10, rex \$0.31, rock \$0.34 and sand \$0.79.
  - (DD) Steelhead \$0.73.
  - (EE) Sturgeon, green \$0.98 (2009 price) and white \$2.09.
  - (FF) Surfperch \$1.15 (2009 price).
  - (GG) Swordfish \$4.00 (2008 price).

- (HH) Thornyhead (Sebastolobus), longspine \$0.33 and shortspine \$0.54.
- (II) Tuna, albacore \$1.16, bluefin \$0.93 (2009 price), bigeye \$4.00 (2008 price), and yellowfin \$3.49 (2006 price).
- (JJ) Walleye \$3.00.
- (KK) Wolf-eel \$1.22.
- (LL) Wrymouth \$0.24.
- (b) CRUSTACEANS:
  - (A) Crab: box \$0.99, Dungeness bay \$3.06 and ocean \$2.48, rock \$1.54 and Tanner \$0.69 (2003 price).
  - (B) Crayfish \$1.97.
  - (C) Shrimp: brine \$1.00 (2009 price), coonstripe \$1.57 (2007 price), ghost (sand) \$20.54, mud \$1.29, pink \$0.35 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot \$7.81.
  - (D) Water flea (Daphnia) \$0.65 (2002 price).
- (c) MOLLUSKS:
  - (A) Abalone, flat \$21.09 (2008 price).
  - (B) Clams: butter \$0.45, cockle \$0.52, gaper \$0.48, Manila littleneck \$2.00 (2008 price), Nat. littleneck \$2.00 (2008 price), razor \$2.37 and soft-shell \$0.50.
  - (C) Mussels, ocean \$0.85 (2009 price).
  - (D) Octopus \$1.65.
  - (E) Scallop, rock \$0.70 (2005 price).
  - (F) Scallop, weathervane dressed weight (shucked) \$5.73 (2002 price) and round weight \$0.55 (2002 price).
  - (G) Squid, market \$0.25 (2007 price).
  - (H) Squid, other species \$0.04.
- (d) OTHER INVERTEBRATES:
  - (A) Jellyfish \$10.00 (2004 price).
  - (B) Sea cucumber \$0.30 (2005 price).
  - (C) Sea urchin, red \$0.54 and purple \$0.30 (2004 price).
  - (D) Sea stars \$1.00.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07; DFW 2-2008, f. & cert. ef. 1-15-08; DFW 3-2009, f. & cert. ef. 1-13-09; DFW 5-2010, f. & cert. ef. 1-13-10; DFW 1-2011, f. & cert. ef. 1-10-11

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**Rule Caption:** Federal Government Inseason Actions: Start of the Trawl Rationalization Program for Commercial Groundfish Fisheries.

**Adm. Order No.:** DFW 2-2011(Temp)

**Filed with Sec. of State:** 1-11-2011

**Certified to be Effective:** 1-11-11 thru 7-9-11

**Notice Publication Date:**

**Rules Amended:** 635-004-0019

**Rules Suspended:** 635-004-0019(T)

**Subject:** The amended rule adopts in-season actions adopted by the federal government for Pacific ocean commercial groundfish fisheries, 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.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-004-0019**

**Inclusions and Modifications**

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries.**

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G,** provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of Federal Register/Vol. 75, No. 162/Monday, August 23, 2010, announced inseason management measures effective August 18, 2010, including, but

# ADMINISTRATIVE RULES

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: (a) the start of the Trawl Rationalization Program; fishing will begin under the Shorebased Individual Fishing Quota (IFQ) Program on January 11, 2011.

[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

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**Rule Caption:** Amendment to rules regarding Parking Permits in some Wildlife Areas.

**Adm. Order No.:** DFW 3-2011

**Filed with Sec. of State:** 1-14-2011

**Certified to be Effective:** 1-14-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 635-008-0148, 635-008-0149, 635-008-0151

**Subject:** Amend rules to establish an access fee to certain wildlife areas administered by ODFW. Effective January 2012 and implemented in three phases, the fee will help offset the cost of operating and managing wildlife areas.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-008-0148

### Purpose

The purpose of the Wildlife Area parking permit system is to develop additional dedicated revenue for designated Wildlife Areas which will be used to augment infrastructure and habitat restoration activities and enhance wildlife viewing opportunities.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 496

Hist.: FWC 12-1990, f. & cert. ef. 2-2-90; DFW 3-2011, f. & cert. ef. 1-14-11

## 635-008-0149

### Definition

For purposes of OAR 635-008-0148 through 635-008-0151:

(1) "Permit" means a vehicle permit that is issued as evidence of a grant of authority to park a motor-propelled vehicle in a designated parking fee area within a designated Wildlife Area.

(2) "Parking" means a vehicle not in motion.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 497.071

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 497.071

Hist.: FWC 12-1990, f. & cert. ef. 2-2-90; FWC 8-1993, f. & cert. ef. 2-8-93; DFW 3-2011, f. & cert. ef. 1-14-11

## 635-008-0151

### Procedures for Issuance and Enforcement of Parking Permits for Sauvie Island Wildlife Area

The Oregon Department of Fish and Wildlife hereby adopts the following procedures relating to issuance and enforcement of parking permits for certain vehicles in Department Wildlife Area parking areas:

(1) Parking is permitted only in designated parking areas. A parking permit is required at all times for all fee parking areas.

(2) Fee parking areas are designated by the following signs:

(a) "Entering ODFW Wildlife Area — Parking Permit Required Beyond This Point";

(b) "Parking allowed only in designated areas — ODFW Wildlife Area Parking Permit Required".

(3) There are two separate permits: an annual permit and a daily permit.

(4) The fee for parking permits is \$7.00 for permits issued on a daily basis or \$22.00 for permits issued on an annual basis beginning each January 1. Beginning with 2012 licenses, any annual hunting license (including Combination and Sports Pac) will include a free annual parking permit.

(5) Permits are issued by selected local agents, Department offices that sell licenses and the Department's Online License Sales website to a party upon payment and may be transferred from vehicle to vehicle.

(6) The permits must be visible from outside the vehicle and be displayed in the front or rear window of the vehicle.

(7) No parking permits will be required for those vehicles which are owned or operated by government agencies. Notwithstanding paragraph (5), the Department reserves the right to issue free administrative parking permits for private vehicles used by volunteers while participating in official Department-related activities. Parking permits will not be required for individuals arriving in private vehicles to address fire, health or safety emergencies.

(8)(a) A person who operates or parks a motor-propelled vehicle in violation of restrictions established and posted under OAR 635-008-0146 through 635-008-0151 commits an offense punishable as provided in ORS 496.992;

(b) The procedure for a peace officer (or other person authorized to enforce the wildlife laws) to follow upon finding a non government vehicle parked in a designated fee parking area without a permit shall consist of the issuance of a citation which shall be either delivered to the defendant or placed in a conspicuous place upon the vehicle in the violation.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 497.071

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 497.071

Hist.: FWC 12-1990, f. & cert. ef. 2-2-90; FWC 8-1993, f. & cert. ef. 2-8-93; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 74-2003(Temp), f. 8-1-03, cert. ef. 8-3-03 thru 8-7-03; Administrative correction 1-12-04; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 3-2011, f. & cert. ef. 1-14-11

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**Rule Caption:** Amend Rule related to the Capture of Peregrine Falcons for use in Falconry.

**Adm. Order No.:** DFW 4-2011

**Filed with Sec. of State:** 1-14-2011

**Certified to be Effective:** 1-14-11

**Notice Publication Date:** 12-1-2010

# ADMINISTRATIVE RULES

**Rules Amended:** 635-055-0000, 635-055-0030, 635-055-0035, 635-055-0037

**Subject:** Amend rules related to the capture of Peregrine Falcons to be used in the practice of Falconry and capture permits including; the capture of nesting or post-fledge peregrine falcons from the wild for the purpose of falconry and; reaffirm an allocation of available peregrine falcon take for use in the sport of falconry.

**Rules Coordinator:** Therese Kucera — (503) 947-6033

## 635-055-0000

### Definition of Terms

For the purpose of these rules, the following definitions apply:

(1) "Captive bred" means any raptor, including eggs, hatched in captivity resulting from parents that mated in captivity, or are the progeny of artificial insemination.

(2) "Falconry" is caring for and training raptors for pursuit of game, and the sport of hunting wild game with raptors.

(3) "Indigenous raptor", for purposes of falconry, means golden eagle (*Aquila chrysaetos*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), northern goshawk (*Accipiter gentilis*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), and great horned owl (*Bubo virginianus*).

(4) "Management or operational activities" means activities on nest-site structures (bridges or buildings) that are operational or maintenance actions to the structure deemed necessary by the structure owners or managers. These activities do not include nest entries for the purposes of banding birds for scientific purposes.

(5) "Passage" means first year migrant raptors capable of flight.

(6) "Post-fledgling" means a young first-year bird capable of flight which has recently flown from its nest.

(7) "Raptor" means any species or hybrid of the families Strigidae, Falconidae and Accipitridae.

(8) "Raptors at hack" means the intentional release of a raptor as a training technique, with the expectation of recapture after a period of time.

(9) "Take", for the purposes of these rules, means to trap, capture, or attempt to trap or capture a raptor from the wild for the purpose of falconry.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 496

Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 11-1983, f. & ef. 3-24-83; FWC 7-1984, f. & ef. 2-29-84; FWC 19-1990, f. & cert. ef. 2-28-90; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08; DFW 147-2009, f. & cert. ef. 12-15-09; DFW 4-2011, f. & cert. ef. 1-14-11

## 635-055-0030

### Limitations on Species Captured and/or Held

(1) The following restrictions are placed on the number of raptors that may be captured in Oregon and/or held for falconry, including non-indigenous species:

(a) Apprentice Falconer — may possess only one raptor, and may obtain only one replacement during any capture season. The raptor shall be an American kestrel, or Red-tailed hawk, captured from the wild under the direct supervision and accompanied by the Apprentice's sponsor. Apprentice falconers shall not take nestling raptors.

(b) General Falconer — may possess not more than two raptors, including captive bred raptors, but may obtain two replacement raptors from the wild in Oregon during a capture season. A General Falconer may capture and/or possess red-tailed hawk, American kestrel, Cooper's hawk, sharp-shinned hawk, goshawk, prairie falcon, merlin or great horned owl. A General Falconer may obtain any number of captive bred raptors so long as the number of raptors held does not exceed two. A General falconer may possess any legally acquired non-indigenous raptor and legally acquired wild captured indigenous raptors.

(c) Master Falconer — may possess not more than three raptors and may obtain two replacement raptors from the wild in Oregon during a capture season. A Master Falconer may capture and/or possess great horned owl, red-tailed hawk, American kestrel, Cooper's hawk, sharp-shinned hawk, goshawk, prairie falcon, merlin, gyrfalcon, peregrine falcon or golden eagle. A Master Falconer may obtain any number of captive bred raptors so long as the number of raptors held does not exceed three. A Master falconer may possess any legally acquired non-indigenous raptor and legally acquired wild captured indigenous raptors.

(2) Young raptors of the year shall be taken (unless otherwise noted e.g. by permit) on weekends only from the third Saturday in May through

the third Sunday in October, and then daily through the last day of February of the following year. This period comprises the "capture season".

(3) Any adult raptor inadvertently taken must be immediately released.

(4) Only the following raptor species and number of each may be taken in the state during the capture season unless otherwise specified:

(a) Red-tailed hawk, American kestrel, Cooper's hawk, sharp-shinned hawk and great horned owl — unlimited and statewide except that owls may be taken as nestlings only.

(b) Goshawk — unlimited and statewide except that no nestling goshawks may be taken in the area north of the Umpqua River and west of Interstate 5. Passage goshawks may be taken statewide.

(c) Prairie falcon — unlimited and statewide except that Wasco, Gilliam, Umatilla, Morrow, Sherman, Jackson and Josephine counties are closed to take of prairie falcons.

(d) Merlin — unlimited and statewide except no nestling merlins may be taken.

(e) Gyrfalcon — only 3 gyrfalcons may be captured during a capture season. Gyrfalcons may be captured statewide. Gyrfalcon capture permits are issued to Master Falconers only and an individual falconer may not capture more than one gyrfalcon per capture season. All gyrfalcon capture permit holders will be notified when the quota has been reached. No take of gyrfalcons is authorized for non-resident falconers.

(5) Golden eagle — unlimited, capture authorized for counties east of the crest of the Cascade Mountain range only. Golden eagles may be captured, imported and/or used for falconry only in accordance with Federal falconry standards as detailed in 50 CFR Sec. 22.24.

(6) Peregrine falcons maybe taken statewide. The Commission will establish allowable take of peregrine falcons, not to exceed five percent of the estimated annual productivity of young peregrine falcons in Oregon, as required by U.S. Fish and Wildlife Service in its Environmental Assessment for the Take of Nestling Peregrine Falcons (Federal Register March 10, 2004, Volume 69, Number 47, page 11455).

(7) The possession of legally acquired non-indigenous raptors listed as a migratory bird in 50 CFR 10.13 is allowed. Only indigenous raptor species, raptors listed in 50 CFR 10.13 and raptors classified as non-controlled or controlled in the Oregon Wildlife Integrity Rules (OAR 635-056) are allowed. The possession for falconry purposes of hybrid raptors of species listed in 50 CFR Sec. 10 are allowed.

Stat. Auth.: ORS 496.012, 496.112, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.112, 496.138, 496.146 & 496.162

Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 9-1980, f. & ef. 2-27-80; FWC 8-1981, f. & ef. 2-26-81; FWC 11-1983, f. & ef. 3-24-83; FWC 7-1984, f. & ef. 2-29-84; FWC 19-1990, f. & cert. ef. 2-28-90; FWC 30-1993, f. & cert. ef. 5-5-93; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08; DFW 147-2009, f. & cert. ef. 12-15-09; DFW 4-2011, f. & cert. ef. 1-14-11

## 635-055-0035

### Capture and Transportation of Raptors

A raptor capture permit is required prior to capturing or attempting to capture any raptor. A non-resident falconer from a state having a federally approved falconry program may obtain a capture permit for a red-tailed hawk, Cooper's hawk, sharp-shinned hawk, prairie falcon, peregrine falcon, great horned owl, golden eagle or American kestrel only. All non-resident applications must include copies of current state and federal falconry permits. All applicants for golden eagle capture must include a copy of the federal authorization to take golden eagles. Only 20 non-resident capture permits will be issued in total each capture season. All non-resident capture permits, except for capture permits for peregrine falcons, will be issued on a first come first served basis.

(1) A nonrefundable application fee of \$15.00 (plus a \$2.00 license agent fee) will be charged for each capture permit allowing the capture of one raptor per permit.

(2) Except for take of peregrine falcons, the Department will issue capture permits in the order applications are received. The permit process will begin January 1st of each year, and applicants must hold a valid Oregon falconry license. The category of species shall be listed on the permit (e.g. "golden eagle", "gyrfalcon", "peregrine falcon", or "other raptor") and the falconer is authorized to take only one raptor from the category specified. A falconer may apply for a capture permit in more than one category. The falconer whose name appears on the permit must do the capturing except for peregrine falcon nestlings; the permit is not transferable.

(3) Capture permit applications for peregrine falcons may be submitted to the Department beginning January 1st and received no later than March 1st of each year. The Department will issue peregrine falcon capture permits by way of a lottery draw pursuant to OAR 635-055-0037.



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(4) If a permit holder violates any of the following rules, the Department will invalidate his or her peregrine capture permit. Taking of a peregrine falcon under a permit that is invalidated is a violation of these rules and is therefore an unlawful taking.

(a) The first four (4) resident peregrine capture permit applications drawn from the lottery who have indicated on their application form their wish to take a nestling peregrine falcon, will be authorized to take a nestling from a natural nest site, or take a post fledgling bird (pursuant to 635-055-0035 (5) (b)). Resident permit holders who are authorized to take a nestling from a natural site must notify the ODFW Falconry Program in writing the names and locations (by providing a clearly marked hardcopy map with sufficient labels and information to determine location; a Public Land Survey System which includes Township, Range, Section, Quarter Section, and Quarter; or a coordinate pair (latitude/longitude, or UTM/Meters) derived from a GPS unit indicating brand and model) of the nest sites they have selected for potential nestling take within two weeks of receiving their raptor capture permit from the department. Resident master falconer permit-holders may instead accept a nestling peregrine falcon taken by persons authorized by the department from man-made structures. This will only occur in circumstances where nestlings need to be removed from a nest during management or operational activities to nest-site structures. In the event that nestlings become available from structures, resident permits will be given preference over nonresidents in the sequence drawn in the lottery.

(b) The remaining two (2) successful resident applicants may accept a young peregrine falcon taken by persons authorized by the department from man-made structures. This will only occur in circumstances where nestlings need to be removed from a nest during management or operational activities to nest-site structures, or alternately the permit holder may take a post-fledgling bird (pursuant to 635-055-0035 (5) (b)).

(c) Of the number of permits available for issuance annually, the Department will make one such permit available to nonresidents. The non-resident permit holder may accept a nestling peregrine falcon taken by persons authorized by the department from man-made structures. This will only occur in circumstances where nestlings need to be removed from a nest during management or operational activities to nest-site structures; or alternately the permit holder may take a post-fledgling bird (pursuant to 635-055-0035 (5) (b)).

(5) Each permit will include conditions crafted by the Department on a case by case basis to address the particular proposal to capture peregrine falcons. Such conditions may include, but are not limited to, requirements to protect the safety of falconers and other humans during capture of peregrine falcons, and will specify where the permit-holder may capture peregrine falcons. The following general conditions apply to all peregrine falcon capture permits:

(a) Young falcons may be removed from their eyries (nests) from May 15th to June 30th daily and only when between 15 and 24 days of age. At least one nestling must be left in each eyrie prior to fledging.

(A) Prior to any nest entry, permit-holders must monitor each potential nest site to assess the presence and occupancy of nesting peregrine falcons and determine the presence and chronology of nestlings in the selected nest(s) (following established protocol U.S. Fish and Wildlife Service. 2003. Monitoring Plan for the American Peregrine Falcon, A species recovered under the Endangered Species Act. U.S. Fish and Wildlife Service, Divisions of Endangered Species and Migratory Birds and State Programs, Pacific Region, Portland, OR. 53 pp.) The permit-holder must identify the site location (by providing a clearly marked map with sufficient labels and information to determine location; a Public Land Survey System which includes Township, Range, Section, Quarter Section, and Quarter; or a coordinate pair (latitude/longitude, or UTM/Meters) derived from a GPS unit indicating brand and model); the names and ownership of the property; the number of young in the nest and approximate ages of the nestlings on a form provided by the Department; and nest monitoring documentation collected to date at the specific nest site proposed for entry. This information must be reported in writing to the ODFW Falconry Program at least seven (7) days prior to attempting any nest entry.

(B) Permit-holders must contact in writing or by phone the appropriate ODFW biologist in the District or Watershed in which the nest(s) are located at least seven (7) days prior to proposed nest entry. Where nests are located on federal land, permit holders must also contact U.S. Forest Service or Bureau of Land Management biologists before entering nest sites. State and federal biologists may accompany permit-holders during take activities.

(C) Permittee must be present when the nestling is being removed from the eyrie.

(b) A post-fledgling peregrine falcon may be taken (trapped) by a permitted master falconer after the falcon flies from its nest through August 31st.

(A) Trapping attempts will be permitted only at locations approved by the Department.

(B) Permittee must be present at all times whenever a trap is in operation while attempting to take a post-fledgling peregrine falcon.

(C) A permit holder must notify the Department's Falconry Program at the Salem headquarters office prior to the proposed dates of any peregrine falcon capture attempts. Proposed capture locations must be disclosed to the Department program staff prior to attempting to capture a post-fledgling peregrine falcon.

(c) Each falconer who takes a peregrine falcon from the wild must report the sex and precise capture location to the Department and the U.S. Fish and Wildlife Service within 5 days following capture (by providing a clearly marked map with sufficient labels and information to determine location; a Public Land Survey System which includes Township, Range, Section, Quarter Section, and Quarter; or a coordinate pair (latitude/longitude, or UTM/Meters) derived from a GPS unit indicating brand and model). If the falconer later determines that the sex of any peregrine falcon taken was reported incorrectly, then the falconer must submit a corrected report as soon as possible after discovering the error.

(d) Falconers must band each peregrine falcon taken with a band provided by the Department.

(e) After a captured falcon reaches 30 days of age, the falconer must pluck breast feathers from the falcon and submit them to the U.S. Fish and Wildlife Service, along with a written record of the precise location of where the bird was taken from in the wild. The address for submission is U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, Virginia 22203-1610.

(6) Upon taking the raptor authorized, the permittee shall immediately validate the permit by recording the date, species, sex, county, and capture method and signing his/her name in the space provided. At the time of capture, the permittee shall affix the permanent plastic band, issued with the permit, to one leg of the bird. Within five business days of capture, the permittee shall take the bird to a Department office to have the permit certified.

(7) Lost, raptors at hack, or captive bred raptors may be re-trapped at anytime without a capture permit. All other raptors captured shall be immediately released.

(8) Exportation of wild caught raptors — No raptor taken from the wild in Oregon shall be transferred to another person residing outside the state except those Oregon wild caught raptors held for six months or longer may be transferred to another person residing outside the state.

(9) An Oregon licensed falconer is allowed to retain legally captured raptors in their possession if they move from Oregon.

(10) Falconers are responsible for treatment and rehabilitation costs of raptors taken for falconry and injured during trapping efforts.

Stat. Auth.: ORS 496.012, 496.112, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.112, 496.138, 496.146 & 496.162  
Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 9-1980, f. & ef. 2-27-80; FWC 8-1981, f. & ef. 2-26-81; FWC 14-1982, f. & ef. 2-25-82; FWC 11-1983, f. & ef. 3-24-83; FWC 8-1986, f. & ef. 3-6-86; FWC 19-1990, f. & cert. ef. 2-28-90; FWC 40-1991, f. & cert. ef. 4-24-91; FWC 33-1992(Temp), f. & cert. ef. 5-11-92; FWC 116-1992, f. & cert. ef. 10-28-92; FWC 30-1993, f. & cert. ef. 5-5-93; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08; DFW 152-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 25-2009(Temp), f. 3-10-09, cert. ef. 5-15-09 thru 8-31-09; Administrative correction 9-29-09; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 147-2009, f. & cert. ef. 12-15-09; DFW 4-2011, f. & cert. ef. 1-14-11

## 635-055-0037

### Peregrine Falcon Capture Permit Process

(1) The Department will conduct the lottery to award peregrine falcon capture permits by drawing names of eligible entrants at random. To participate in the lottery, a person must:

(a) If an Oregon resident possess a current Master Falconers license as per OAR 635-055-0002; or

(b) If a nonresident possess a Master Falconers license from a state having a federally approved falconry program.

(2) The Department will not accept a permit application from any person who:

(a) Is awaiting prosecution for, or has been convicted of, any violation of the animal cruelty or animal abuse laws;

(b) Is awaiting prosecution for, or has been convicted of, a wildlife violation involving the illegal take of wildlife;

(c) Is awaiting prosecution for, or has been convicted of, aiding in the illegal take of wildlife; or

(d) Has had his or her hunting or fishing license suspended for a wildlife violation.

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(3) A \$15.00 application fee (plus a \$2.00 license agent fee) must be submitted with the application. Application fees are nonrefundable, whether or not an applicant is successful in the drawing.

(4) Peregrine capture permit applications (including fees) must be submitted to the Department's Salem headquarters office no later than March 1 each year.

(a) If hand delivered, an application must be received at Department headquarters office (3406 Cherry Ave, NE, Salem, OR, 97303) by 5:00 p.m. on March 1

(b) If sent via postal mail, an application must be postmarked no later than March 1.

(5) If an applicant violates any of the following restrictions, the Department will remove his or her application from the drawing.

(a) An applicant may submit only one peregrine capture permit application per capture season.

(b) An applicant must submit a completed application containing name, license number, address, and phone number.

(6)(a) During each year's lottery, the Department will draw six Oregon resident applications and two alternates, plus one non-resident application and a non-resident alternate.

(b) The Department will notify successful applicants and alternates by mail. If the applicant does not reply in writing (mail, fax, or email) within 10 calendar days, the applicant will be disqualified and the Department will offer the permit to the next alternate. If neither alternate replies in the required time, the permit will not be issued.

(7) Peregrine falcon capture permits are not transferable.

Stat. Auth.: ORS 496.012, 496.112, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.112, 496.138, 496.146 & 496.162

Hist.: DFW 152-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 147-2009, f. & cert. ef. 12-15-09; DFW 4-2011, f. & cert. ef. 1-14-11

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## Department of Forestry Chapter 629

**Rule Caption:** Appeals and Hearings Under ORS 477.260.

**Adm. Order No.:** DOF 1-2011(Temp)

**Filed with Sec. of State:** 1-7-2011

**Certified to be Effective:** 1-7-11 thru 7-5-11

**Notice Publication Date:**

**Rules Amended:** 629-001-0015, 629-001-0020, 629-041-0035

**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

### 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

### 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 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 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

### 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 under ORS 477.260(1) must be made in writing, to the State Forester, within 30 days after the date of the public budget meeting for the forest protection district.

(2) The written appeal in section (1) of this rule 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 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 are distributed to board members for their consideration; and

(c) Inform the owner 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 under ORS 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 ORS 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 629-001-0010 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 pub-

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lic 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

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## Department of Human Services, Administrative Services Division and Director's Office Chapter 407

**Rule Caption:** Definition Correction in Abuse Reporting and Protective Services in Community Programs and Facilities Rules.

**Adm. Order No.:** DHSD 11-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 407-045-0260

**Rules Repealed:** 407-045-0260(T)

**Subject:** The Department of Human Services is amending this rule to correct a scrivener's error in the definition of "Neglect" found at 407-045-0260(1)(e)(A). The current rule states, "Neglect includes active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that creates a risk of significant harm or results in harm to the adult." The correct language and legal standard is "...significant risk of harm." A temporary rule is currently in effect (8/5/10 through 1/31/11) and will be repealed when this permanent rulemaking goes into effect.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

### 407-045-0260

#### Definitions

As used in OAR 407-045-0250 to 407-045-0370, the following definitions apply:

(1) "Abuse of an adult with developmental disabilities" means:

(a) "Abandonment" including desertion or willful forsaking by a person who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(b) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.

(c) "Financial exploitation" including:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an adult.

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out.

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an adult.

(D) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult. "Effectively" means use of income or assets for the benefit of the adult.

(d) "Involuntary seclusion" means the involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult. Involuntary seclusion may include placing restrictions on an adult's freedom of movement by restriction to his or her room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence, or program, unless agreed to by the Individual Support Plan (ISP) team included in an approved Behavior Support Plan (BSP) or included in a brokerage plan's specialized support. Restriction may be permitted on an emergency or short term basis when an adult's presence would pose a risk to health or safety.

(e) "Neglect" including:

(A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that creates a significant risk of harm or results in actual harm to an adult. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult

(B) Failure of a caregiver to make a reasonable effort to protect an adult from abuse.

(f) "Physical abuse" means:

(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.

(B) Willful infliction of physical pain or injury.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.

(g) "Sexual abuse" including:

(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(B) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual favors. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact and other physical conduct directed toward an adult.

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion.

(E) Any sexual contact between an adult with a developmental disability and a relative of the person with a developmental disability other than a spouse or partner. "Relative" means a parent, grandparent, children, brother, sister, uncle, aunt, niece, nephew, half brother, half sister, step-parent, or stepchild.

(F) As defined in ORS 163.305, "sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(h) "Wrongful restraint" means:

(A) A wrongful use of a physical or chemical restraint, excluding an act of restraint prescribed by a licensed physician, by any adult support team approved plan, or in connection with a court order.

(B) "Wrongful restraint" does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided only that the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(i) "Verbal abuse" includes threatening significant physical harm or causing emotional harm to an adult through the use of:

(A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an adult.

(D) For purposes of this section, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, or sight if gestured, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(j) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to abuse.

(2) "Abuse of an adult with mental illness" means:

(a) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.

(b) "Neglect" including:

(A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that results in actual harm or significant mental injury to an adult. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

(B) Failure of a caregiver to make a reasonable effort to protect an adult from abuse.

(c) "Physical abuse" means:



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(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.

(B) Willful infliction of physical pain or injury.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.

(d) "Sexual abuse" including:

(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(B) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual favors. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact including requests for sexual favors and other physical conduct directed toward an adult.

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion.

(E) As defined in ORS 163.305, "sexual contact" means any touching of sexual or other intimate parts of a person or causing such person to touch sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(e) For the purpose of section (2) of this rule, the following definitions apply:

(A) "Employee" means an individual who provides a program service or who takes part in a program service and who receives wages, a salary, or is otherwise paid by the program for providing the service.

(B) "Program staff" means an employee or individual who, by contract with the program, provides a service and who has the applicable competencies, qualifications, and certification, required by the Integrated Services and Supports Rule (ISSR) (OAR 309-032-1500 to 309-032-1565) to provide the service.

(C) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program, or contracted directly with the Department of Human Services' (Department) Addictions and Mental Health Division (AMH) for the direct delivery of mental health services and supports.

(D) "Volunteer" means an individual who provides a program service or who takes part in a program service and who is not an employee of the program and is not paid for services. The services must be non-clinical unless the individual has the required credentials to provide a clinical service.

(E) In addition to the definitions of abuse in section (2)(a) through (d), abuse also has the following meanings for employees, program staff, providers, and volunteers:

(i) "Abandonment" including desertion or willful forsaking by an individual who has assumed responsibility for providing care when the desertion or forsaking results in harm or places the adult at a risk of serious harm.

(ii) "Financial exploitation" including:

(I) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an adult.

(II) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out.

(III) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an adult.

(IV) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult. "Effectively" means use of income or assets for the benefit of the adult.

(iii) "Involuntary Seclusion" means the involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult. Involuntary seclusion may include placing restrictions on an adult's freedom of movement by restriction to his or her room or a specific area or restriction from access to ordinarily accessible areas of the facility, residence, or program unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short term basis when an adult's presence would pose a risk to health or safety.

(iv) "Neglect" including active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental

health of an adult that creates a significant risk of harm to an adult or results in actual harm or significant mental injury to an adult. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

(v) "Verbal abuse" includes threatening significant physical harm or causing emotional harm to an adult through the use of:

(I) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.

(II) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(III) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an adult.

(IV) For purposes of this section, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(V) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(vi) "Wrongful restraint" means:

(I) A wrongful use of a physical or chemical restraint excluding an act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730.

(II) Abuse does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(F) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to abuse.

(3) "Abuse Investigation and Protective Services Report" means a completed report.

(4) "Adult" means an adult who is 18 years of age or older who:

(a) Has a developmental disability and is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or

(b) Has a mental illness and is receiving services from a community program or facility.

(c) Receives services from a community program or facility or care provider which is licensed or certified by or contracts with the Department; and

(d) Is the alleged abuse victim.

(5) "Adult protective services" means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts, and to safeguard an allegedly abused adult's person, property, or funds.

(6) "Brokerage" or "Support service brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) to (g) associated with planning for and implementation of support services for an adult with developmental disabilities.

(7) "Caregiver" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(8) "Community facility" means a community residential treatment home or facility, community residential facility, adult foster home, community residential training home or facility, or a facility approved by AMH for acute care services or crisis respite.

(9) "Community program" means the community mental health or developmental disabilities program as established in ORS 430.610 to 430.695.

(10) "Designee" means the community program.

(11) "Department" means the Department of Human Services.

(12) "Inconclusive" means there is insufficient evidence to conclude the alleged abuse occurred or did not occur by a preponderance of the evidence. The inconclusive determination may be used only in the following circumstances:

(a) After diligent efforts have been made, the protective services investigator is unable to locate the person alleged to have committed the

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abuse, or cannot locate the alleged victim or another individual who might have information critical to the investigation; or

(b) Relevant records or documents are unavailable, or there is conflicting or inconsistent information from witnesses, documents, or records with the result that after the investigation is complete, there is insufficient evidence to support a substantiated or not substantiated conclusion.

(13) "Law enforcement agency" means any city or municipal police department, county sheriff's office, the Oregon State Police, or any district attorney.

(14) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an adult has suffered abuse, or that any individual with whom the official comes in contact while acting in an official capacity has abused an adult. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 20.295.

(15) "Not substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(16) "OIT" means the Department's Office of Investigations and Training.

(17) "Provider agency" means an entity licensed or certified to provide services, or which is responsible for the management of services to clients.

(18) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor, or podiatrist, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide, or employee of an in-home health services organization;

(c) Employee of the Department, county health department, community mental health or developmental disabilities program, or private agency contracting with a public body to provide any community mental health services;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech, or occupational therapist;

(h) Information and referral, outreach, or crisis worker;

(i) Attorney;

(j) Firefighter or emergency medical technician; or

(k) Any public official who comes in contact with adults in the performance of the official's duties.

(19) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(20) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735 - 430.765, 443.400 - 443.460 & 443.705 - 443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0210, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0060, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10; DHSD 4-2010, f. & cert. ef. 6-29-10; DHSD 7-2010(Temp), f. & cert. ef. 8-5-10 thru 1-31-11; DHSD 11-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Definition Correction in Abuse Reporting and Protective Services in Children's Care Provider (CCP) Settings.

**Adm. Order No.:** DHSD 12-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 407-045-0820

**Rules Repealed:** 407-045-0820(T)

**Subject:** This rule is being amended to correct a scrivener's error in the definition of the term "Not Substantiated" in OAR 407-045-0820(15). The current rule (effective 7/1/10) states the standard of evidence as no reasonable cause to believe abuse occurred based on the available evidence. The correct legal standard is a preponderance of the evidence establishes the alleged abuse did not occur. A temporary rule is currently in effect (7/12/10 through 1/8/11) and will be repealed when this permanent rulemaking goes into effect.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-045-0820

### Definitions

The following definitions apply to OAR 407-045-0800 through 407-045-0980:

(1) "Abuse" includes but is not limited to:

(a) Any assault, as defined in ORS Chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(b) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(c) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration, and incest, as defined in ORS Chapter 163.

(d) Sexual abuse, as defined in ORS Chapter 163.

(e) Sexual exploitation which includes but is not limited to:

(A) Contributing to the sexual delinquency of a minor, as defined in ORS Chapter 163, and any other conduct which allows, employs, authorizes, permits, induces, or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording, or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in 163.665 and 163.670;

(B) Sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; or

(C) Allowing, permitting, encouraging, or hiring a child to engage in prostitution, as defined in ORS Chapter 167.

(f) Negligent treatment or maltreatment of a child which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare.

(g) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(h) Buying or selling an individual under 18 years of age, as described in ORS 163.537.

(i) Permitting an individual under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(j) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(2) "Child" means an unmarried individual under 18 years of age.

(3) "Children's care provider (CCP)" means a licensed residential care agency, day treatment program, foster care agency, therapeutic boarding school, or outdoor youth program that has assumed responsibility for all or a portion of the care of a child. The term includes the CCP's employees, agents, contractors and their employees, and volunteers.

(4) "Day treatment program" means a licensed CCP that provides day treatment services.

(5) "Day treatment services" means comprehensive, interdisciplinary, nonresidential, community based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to children with emotional disturbances.

(6) "Department" means the Department of Human Services.

(7) "Designated medical professional" means a medical professional as defined in ORS 418.747 who has been trained to conduct child abuse medical assessments pursuant to 418.782.

(8) "Foster care agency" means a licensed child-caring agency that offers to place children by taking physical custody of and then placing the children in homes certified by that agency.

(9) "Inconclusive" means a preponderance of evidence is not available to determine whether the alleged abuse did or did not occur. Evidence may be inconclusive because relevant witnesses, documents, or records are unavailable, or because there is conflicting or inconsistent information from witnesses, documents, or records, with the result that at the conclusion of the investigation there is insufficient evidence to support a "substantiated" or a "not substantiated" conclusion.

(10) "Legal finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of an OIT substantiation.

(11) "Likely to endanger the health or welfare of the child" means negligent treatment or maltreatment that is likely to result in harm to the child, based on the available facts, and on the individual child's particular physical, emotional, behavioral, or mental health needs, circumstances, or vulnerabilities.

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(12) "Maltreatment" means any action toward a child which carries a risk of harm to the child's physical, emotional, behavioral, or mental health or welfare. Examples of staff behaviors that must be reported as potential abuse by maltreatment include but are not limited to the willful infliction of pain or injury (e.g. hitting, kicking, pushing, arm twisting, head twisting, etc.); exposure to domestic violence; inappropriate or excessive force during a containment hold or restraint; or other physical contact with the child inconsistent with prescribed treatment or care. All injuries during a restraint or hold must be reported, including minor injuries. Other behaviors that must be reported include the use of derogatory names, phrases, profanity, ridicule, harassment, intimidation, or coercion. While such behaviors do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the actions were likely to endanger the child's health or welfare.

(13) "Mandatory reporter" means an individual or entity having a duty to report as defined in ORS 419B.005 to 419B.050.

(14) "Negligent treatment" means failure to perform duties or failure to take action required to protect the child's health or welfare. Examples of staff behaviors that must be reported as potential abuse by negligent treatment include but are not limited to failure to supervise a child or failure to intervene when a child needs assistance or care. While such failures do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the failures were likely to endanger the child's health or welfare.

(15) "Not substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(16) "OIT" means the Department's Office of Investigations and Training.

(17) "OIT investigator" means an employee of the Department's OIT who is authorized and trained to investigate reports of child abuse or neglect under these rules.

(18) "OIT Substantiation Review Committee (OSRC)" means a group of three Department employees selected by the Department's Deputy Director or designee, none of whom was involved in any part of the investigation that resulted in the OIT substantiation under review. The committee must consist of Department employees who are knowledgeable about the dynamics of child abuse and neglect, including the assessment or investigation of child abuse and neglect, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings.

(19) "Outdoor youth program" means a licensed program that provides, in an outdoor living setting, services to youth who are enrolled in the program because they have behavioral or mental problems, or problems with abuse of alcohol or drugs. "Outdoor youth program" does not include any program, facility, or activity operated by a governmental entity, operated or affiliated with the Oregon Youth Conservation Corps, or licensed by the Department as a child-caring agency under other Department authority. It does not include outdoor activities for youth designed to be primarily recreational such as YMCA, Outward Bound, Boy Scouts, Girl Scouts, Campfire, church groups, or other similar activities.

(20) "Person" means the person OIT has reasonable cause to believe is responsible for child abuse in a substantiated OIT report, and about whom a substantiated finding has been made.

(21) "Protective action" means a set of services or activities undertaken to address and meet a child's safety needs after a report of abuse has been received by OIT.

(22) "Residential care agency" means a licensed child-caring agency that provides services to children 24 hours a day.

(23) "Substantiated" means that a preponderance of evidence establishes the alleged abuse occurred.

(24) "Suspicious physical injury" is defined in ORS 419B.005 and includes but is not limited to burns or scalds; extensive bruising or abrasions on any part of the body; bruising, swelling, or abrasions on the head, neck, or face; fractures of any bone in a child under the age of three; multiple fractures in a child of any age; dislocations, soft tissue swelling, or moderate to severe cuts; loss of the ability to walk or move normally according to the child's developmental ability; unconsciousness or difficulty maintaining consciousness; multiple injuries of different types; injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or any other injury that threatens the physical well-being of the child.

(25) "Therapeutic boarding school" means a licensed organization or a program in an organization that:

(a) Is primarily a school and not a residential care agency;

(b) Provides educational services and care to children 24 hours a day; and

(c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or ensuring that children receive therapeutic services.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.189, 418.205 - 418.327, 418.747, 419B.005 - 419B.050 & 419B.328

Hist.: DHSD 12-2007(Temp), f. & cert. ef. 12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10; DHSD 6-2010(Temp), f. & cert. ef. 7-12-10 thru 1-8-11; DHSD 12-2010, f. 12-30-10, cert. ef. 1-1-11

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

**Rule Caption:** Changing OARs affecting Child Welfare programs.  
**Adm. Order No.:** CWP 22-2010

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 12-28-10

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 413-070-0570, 413-070-0572, 413-070-0574

**Subject:** The Department is adopting OAR 413-070-0570, 413-070-0572, and 413-070-0574 to describe when the Department will consider and pursue special immigrant juvenile status (SIJS) for a child in the custody of the Department. These rules also make permanent portions of temporary rules adopted on June 30, 2010 as part of OAR 413-120-0900 to 413-120-0980 (which also covered Intercountry and Hague adoptions). SIJS consideration is necessary but is not limited to children for whom adoption is a plan. OAR 413-070-0570 sets out the purpose of the Department's rules regarding the consideration of special immigrant juvenile status for a child in the custody of the Department. OAR 413-120-0572 defines certain terms used in these rules. OAR 413-070-0574 states the requirements the Department must follow in order to apply for special immigrant juvenile status for a child in the custody of the Department.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 413-070-0570

#### Purpose

These rules (OAR 413-070-0570 to 413-070-0574) describe when the Department will consider and pursue *special immigrant juvenile status* for a *child* or *young adult* who was brought to the United States by a parent or legal guardian not for the purpose of *adoption*, does not have lawful permanent resident status, cannot be returned safely to a parent or placed in the country of origin of the *child* or *young adult*, and should remain in the United States pending finalization of a permanent plan other than return to parent.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 22-2010, f. & cert. ef. 12-28-10

### 413-070-0572

#### Definitions

The following definitions apply to OAR 413-070-0570 to 413-070-0574:

(1) "Adoption" means a legal or administrative process that establishes a permanent legal parent-child relationship between a child and an adult who is not already the child's legal parent and terminates the legal parent-child relationship between the adopted child and any former parent.

(2) "Child" means a person under 18 years of age.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "Special immigrant juvenile status" means a legal process to obtain lawful permanent resident status for a child who does not have lawful permanent resident status because he or she entered the United States without inspection and who meets the other criteria required by federal law.

(5) "Young adult" means a person 18 to 20 years of age who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 22-2010, f. & cert. ef. 12-28-10



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413-070-0574

## Special Immigrant Juvenile Status

(1) The Department may apply for *special immigrant juvenile status* for a *child* or *young adult* in the legal and physical custody and guardianship of the Department if requirements of all of the following subsections are met:

(a) The juvenile court has determined that:

(A) The *child* or *young adult* is a dependent ward;

(B) The *child* or *young adult* cannot be returned to a parent due to abuse, neglect, abandonment, or similar circumstance; and

(C) It is not in the best interests of the *child* or *young adult* to return to the child's, young adult's, or parent's country of nationality or country of last habitual residence.

(b) The permanency plan for the *child* or *young adult* has been changed by the court from return to parent to another permanent plan.

(c) The *child* or *young adult* is not a United States citizen and does not have lawful permanent resident status.

(d) The *child* or *young adult* is unmarried and under 21 years of age.

(2) Department staff must consult with and obtain approval from the Children, Adults, and Families Diversity and International Affairs Program Manager or designee before applying for *special immigrant juvenile status* for *achild* or *young adult* in the legal and physical custody and guardianship of the Department.

(3) To apply for *special immigrant juvenile status*, the Department must:

(a) Before the 21st birthday of the child or young adult, obtain a court order from the juvenile court that makes the necessary findings to support an application for *special immigrant juvenile status*; and

(b) Complete and submit all necessary U.S. Citizenship and Immigration Service forms and applications for *special immigrant juvenile status* prior to the 21st birthday of the *child* or *young adult*.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 22-2010, f. & cert. ef. 12-28-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 23-2010

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 12-28-10

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 413-120-0900, 413-120-0905, 413-120-0910, 413-120-0920, 413-120-0925, 413-120-0930, 413-120-0940, 413-120-0945, 413-120-0950, 413-120-0960, 413-120-0970

**Subject:** OAR 413-120-0900, 413-120-0905, 413-120-0910, 413-120-0920, 413-120-0925, 413-120-0930, 413-120-0940, 413-120-0945, 413-120-0950, 413-120-0960, and 413-120-0970 about Intercountry Adoption Pursuant to the Hague Convention and Intercountry Adoption Act are being adopted to make permanent the temporary rules adopted on July 1, 2010 and in response to Senate Bill 10 (2009) codified as ORS 417.262 and House Bill 3471 (2009) codified as ORS 417.265 to comply with changes in the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and federal law, The Intercountry Adoption Act of 2000 (42 USC 14901 to 14954). OAR 413-120-0900 sets out the purpose of these rules (OAR 413-120-0900 to 413-120-0970) and when an adoption case is subject to the requirements of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Convention) and the Intercountry Adoption Act of 2000, 42 USC 14901 to 14954. OAR 413-120-0905 defines certain terms used in these rules. OAR 413-120-0910 covers the Convention adoption case information the Department must provide to the U. S. State Department. OAR 413-120-0920 covers incoming Convention adoptions (the adoption of a child immigrating to the United States). OAR 413-120-0925 covers outgoing Convention adoptions (the adoption of a child emigrating from the United States). OAR 413-120-0930 states the Department's responsibilities for transition, travel, placement, and registration during an outgoing Convention adoption. OAR 413-120-0940 states when the Department may consent to an outgoing Convention adoption and the Department's responsibilities for post-placement supervision during an outgoing Convention adoption. OAR 413-120-0945 states the Department's finalization and post-finalization responsibilities during an

outgoing Convention adoption. OAR 413-120-0950 states a child's eligibility for adoption assistance benefits when the child is the subject of a Convention adoption. OAR 413-120-0960 states the information the Department must provide to the prospective adoptive parents in an outgoing Convention adoption. OAR 413-120-0970 states when the Department must obtain a Hague custody declaration and when the Hague custody declaration must accompany the child leaving the country.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-120-0900

### Purpose

These rules (OAR 413-120-0900 to 413-120-0970) describe:

(1) The Department's responsibilities in cases that are subject to the requirements of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Convention) and the Intercountry Adoption Act of 2000, 42 USC 14901 to 14954 (IAA). The Convention and IAA apply to any case where a child who is a habitual resident of one Convention country has been, is being, or will be moved to another Convention country for the purpose of adoption. The Convention and IAA are intended to protect the rights of and prevent abuses against children, birth families, and adoptive parents involved in any adoption that is subject to the Convention and IAA and to ensure that such adoptions are in the best interests of the child.

(2) The duty of the Department to enter into a formal agreement with the foreign authorized entity of the receiving Convention country for an outgoing Convention adoption to assure that the prospective adoptive parents are suitable and willing to adopt the child, support child safety, and assure the provision of needed services during the period of post-placement supervision prior to finalization of the adoption.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

## 413-120-0905

### Definitions

The following definitions apply to OAR 413-120-0900 to 413-120-0970:

(1) "Adoption" means a legal or administrative process that establishes a permanent legal parent-child relationship between a child and an adult who is not already the child's legal parent and terminates the legal parent-child relationship between the adopted child and any former parent.

(2) "Central authority" means the entity designated as such by a Convention country that is authorized to discharge the duties imposed on Convention countries.

(3) "Central authority functions" means any duty required to be carried out by a central authority or foreign authorized entity under the Convention.

(4) "Convention" means the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoptions, concluded at The Hague, the Netherlands, on May 29, 1993, which went into effect in the United States on April 1, 2008.

(5) "Convention adoption" means an adoption of a child who is a habitual resident in a Convention country by an individual in another Convention country when the child has been, is being, or will be moved between the two Convention countries for the purpose of adoption.

(6) "Convention country" means a country that is a party to the Convention.

(7) "Department" means the Department of Human Services, Child Welfare.

(8) "Foreign authorized entity" means a foreign central authority or an accredited entity authorized by the foreign country to perform central authority functions in Convention adoption cases.

(9) "Hague adoption certificate" means a certificate issued by the Secretary of State in an outgoing Convention adoption certifying that the child has been adopted in the United States in conformity with the Convention and IAA.

(10) "Hague custody declaration" means a declaration issued by the Secretary of State in an outgoing Convention adoption declaring that custody of the child for purposes of adoption has been granted in the United States in conformity with the Convention and IAA.

(11) "IAA" means the Intercountry Adoption Act of 2000, Public Law 106-279, 42 USC 14901 to 14954.

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(12) "Incoming Convention adoption" means a case in which a child who is a resident of another Convention country has been, is being, or will be moved to the United States for placement and adoption.

(13) "Outgoing Convention adoption" means a case in which a child in the United States has been, is being, or will be moved to another Convention country for placement and adoption.

(14) "Prospective adoptive parents" means the parents, family members, or other people who reside in the residence, or the physical home location of the family, who have been studied and approved by a foreign authorized entity to adopt a child in the legal and physical custody of the Department and with whom the Department has made an official decision to place the child in the family home for the purpose of adoption.

(15) "Receiving Convention country" means a Convention country in which a child who is the subject of an outgoing adoption will be placed for purposes of adoption.

(16) "Relative" means an individual with one of the following relationships to the child or young adult through the child or young adult's parent:

(a) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(b) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(c) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(d) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(17) "Secretary of State" means the Secretary of the United States Department of State, the central authority for the United States.

(18) "Special Immigrant Juvenile Status" means the legal process to obtain lawful permanent resident status for a child who does not have lawful permanent resident status because he or she entered the United States without inspection.

(19) "U.S. State Department" means the United States Department of State.

Stat. Auth.: ORS 417.262, 417.265, 418.005  
Stats. Implemented: ORS 417.262, 417.265, 418.005  
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

## 413-120-0910

### Duty to Provide Information to Convention Case Registry

(1) Notwithstanding any other Department rule regarding the disclosure of information related to adoptions, the Department must provide all information to the U.S. State Department that is required for registry reporting. This includes, but is not limited to, information on each of the following actions for a Convention adoption, either incoming or outgoing, pending or finalized by the Department:

(a) A child immigrating to the United States for the purpose of adoption;

(b) A child emigrating from the United States for the purpose of adoption;

(c) Number of disruptions;

(d) Number of dissolutions; and

(e) Average length of time to finalization.

(2) The Department must maintain a database of all Oregon, licensed, private agency adoption placements, disruptions, finalizations, and dissolutions. This information must be reported to the U.S. Department of Health and Human Services Administration for Children, Youth, and Families Children's Bureau.

Stat. Auth.: ORS 417.262, 417.265, 418.005  
Stats. Implemented: ORS 417.262, 417.265, 418.005  
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

## 413-120-0920

### Adoption of a Child Immigrating to the United States (Incoming Convention Adoption)

(1) An incoming Convention adoption can involve a child who:

(a) Holds or is eligible for dual United States and foreign citizenship; or

(b) Is undocumented, but the foreign authorized entity of the child's birth country has determined that the Convention applies to the adoption.

(2) The Department will cooperate with each applicable foreign authorized entity and comply with the requirements of the Convention and IAA with respect to each incoming Convention adoption.

(3) Adoption planning for a child that may be the subject of an incoming Convention adoption must comply with all other applicable Department rules.

Stat. Auth.: ORS 417.262, 417.265, 418.005  
Stats. Implemented: ORS 417.262, 417.265, 418.005  
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

## 413-120-0925

### Adoption of a Child Emigrating from the United States (Outgoing Convention Adoption)

(1) The Department may pursue an outgoing Convention adoption provided that:

(a) It is in the best interest of the child;

(b) The child has not been abducted, sold, or trafficked in connection with the adoption; and

(c) The prospective adoptive parent:

(A) Is a relative;

(B) Has been assessed, approved, and trained; and

(C) Has been determined able and willing to permanently provide for the safety, well-being, and special needs of the child.

(2) An outgoing Convention adoption may involve a child who meets the requirements of one of the following subsections:

(a) The child is, or is eligible to become, a:

(A) United States citizen;

(B) Legal United States resident; or

(C) Dual United States and foreign citizen.

(b) The child is undocumented, but the foreign authorized entity of the child's birth country has determined that the Convention applies to the adoption.

(3) Adoption planning for a child that may be the subject of an outgoing Convention adoption must comply with other Department rules, including Child Welfare polices: I-AB.4 "CPS Assessment", 413-015-0400 to 413-015-0485; I-F.2 "Determining the Appropriateness of Adoption as a Permanency Plan for a Child", OAR 413-110-0300 to 413-110-0360; I-E.1.1 "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0087; I-F.6 "Sibling Adoption Placement Planning", OAR 413-110-0100 to 413-110-0150; I-G.1.2 Identification and Consideration of Potential Adoptive Resources", OAR 413-120-0700 to 413-120-0760; I-G.1.5 "Adoption Placement Selection", OAR 413-120-0000 to 413-120-0060; and I-G.1.10 "Adoption Placement Supervision and Support", OAR 413-120-0800 to 413-120-0880.

(4) Before a child may be placed in a prospective adoptive home in another Convention country the Department must meet the requirements of each of the following subsections:

(a) Make a written determination that the child is eligible for adoption, that an outgoing Convention adoption is in the child's best interests, and that placement with the prospective adoptive parents is in the best interests of the child.

(b) Complete or obtain a written child background study that includes information about the child's identity; upbringing; adoptability; ethnic, religious, and cultural background; social environment; family history; personal medical history; family medical history; and special needs.

(c) Determine that the prospective adoptive parents meet the definition of relative and document that determination.

(d) Work with the foreign authorized entity in the receiving Convention country to determine whether the prospective adoptive parents are suitable, qualified, and eligible to adopt the child. To do so the Department must meet the requirements in each of following paragraphs:

(A) Provide a copy of the child's background study to the foreign authorized entity in the receiving Convention country.

(B) Obtain from the foreign authorized entity a comprehensive home study on the prospective adoptive parents that is prepared in accordance with the laws of the receiving country; meets the standards established by the Department using the Department's Hague Home Study template; addresses the capacity of the prospective adoptive parents to meet the child's safety, permanency and well-being needs; and includes all of the following:

(i) Information on the prospective adoptive parents, including: identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an inter-country adoption, and the characteristics of a child for whom they would be qualified to care;

(ii) Confirmation that a foreign authorized entity has determined that the prospective adoptive parents are eligible and suitable to adopt and has

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ensured that the prospective adoptive parents have been counseled as necessary;

(iii) The results of a criminal background check; and

(iv) Information from competent references for the prospective adoptive parents.

(C) Obtain written confirmation from the foreign authorized entity that the prospective adoptive parents have completed a minimum of 10 hours of Department-approved training that includes training on all of the following:

(i) The effects of physical, emotional, and sexual abuse and neglect on a child;

(ii) The effects of drugs and alcohol on a child;

(iii) The effects of relocating a child and transition issues;

(iv) The significance of the birth family, include grief and loss issues;

(v) Openness in adoption;

(vi) Attachment process and attachment difficulties;

(vii) Positive behavior management; and

(viii) The specific needs of the child to be adopted by the prospective adoptive parents.

(D) Provide notice to the foreign authorized entity studying the prospective adoptive family and providing required training to the prospective adoptive parents that the Department does not condone the use of corporal punishment.

(E) Obtain from the foreign authorized entity a written, signed Supervision Agreement using the approved Department form that describes the responsibilities of the Department and foreign authorized entity with regard to the child's placement with the prospective adoptive parents and includes each of the following:

(i) Requirements for face-to-face visits with the child and the prospective adoptive parents at least every 30 days. These meetings must occur in the prospective adoptive home at least once every 60 days.

(ii) Requirements for face-to-face visits in the prospective adoptive home with other individuals living in the home who can provide information about the child's safety and well-being, as well as any concerns with the placement.

(iii) Requirements for contact at least once every 30 days with professional persons who have established a relationship to the child who can provide collateral observations regarding the child's functioning and the adoptive placement.

(iv) Minimum standards for written reports to be provided every 90 days on contacts with the child, prospective adoptive family, other family members, and collateral contacts.

(v) Confirmation that the child will be authorized to enter and reside in the receiving country permanently or on the same basis as the prospective adoptive parents.

(vi) Confirmation that the foreign authorized entity consents to the adoption of the child by the prospective adoptive family.

(vii) Confirmation that the foreign authorized entity agrees that the child's adoption by the prospective adoptive family may proceed.

(e) After the child is fully-free for adoption, establish proof of citizenship for the child and apply for applicable passports.

(f) Submit to the foreign authorized entity written confirmation of the reasons the Department determined that the proposed adoptive placement is in the best interests of the child.

(g) Establish a direct means for the child's collateral contacts in the receiving Convention country to communicate any health or safety concerns about the child to the Department.

(h) Counsel and inform the child, as appropriate in light of the child's age and maturity, of the effects of the adoption, consider the child's views regarding the adoption, and document the discussion and how the child's views were considered.

(i) If the child's consent to the adoption is required, counsel and inform the child about the effects of granting consent, obtain written consent from the child in a manner that assures the consent is given freely and without any inducement by compensation of any kind, and document the discussion.

(j) Determine whether the receiving Convention country requires a Hague custody declaration prior to placement of the child in the home of the prospective adoptive parents, and, if required, apply for and obtain a Hague custody declaration from the U.S. State Department, as provided in OAR 413-120-0945.

(k) Assure that the child's move to the receiving Convention country will be made under secure and appropriate circumstances and in the company of the child's prospective adoptive parents, caseworker, or with another adult.

(5) Following completion of all of requirements in section (4) of this rule and prior to the child traveling to the receiving Convention country for placement with the prospective adoptive parents, the Department must obtain an order from the court that makes findings:

(a) In support of an application for a Hague adoption certificate;

(b) That the prospective adoptive placement is in the best interests of the child;

(c) Authorizing the child to travel to the foreign country for placement with the prospective adoptive parents; and

(d) Authorizing release of the court order for purposes of affecting the child's placement.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

## 413-120-0930

### Transition, Travel, Placement, and Registration Requirements

For an outgoing Convention adoption:

(1) The Department is responsible for assuring that the child is fully prepared for transition to a new home, community, and country.

(2) A component of transition is establishing that the region the child will travel to and reside in is approved as a safe place to travel by the U.S. State Department. The International Affairs and Diversity Program office serves as the liaison with U.S. State Department and the applicable Consular office and makes the determination about travel safety.

(3) The child's move to the receiving Convention country must be made under secure and appropriate circumstances and in the company of the child's prospective adoptive parents, caseworker, or another adult.

(4) The child must carry a regular passport from all countries in which the child is a citizen.

(5) If the receiving Convention country requires a Hague custody declaration, the individual accompanying the child during travel must carry a copy of the Hague custody declaration.

(6) After a child is placed in another country for the purpose of adoption, the Department must register the child with U.S. State Department as a United States citizen living abroad.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

## 413-120-0940

### Post-Placement Supervision

(1) Notwithstanding the provisions of OAR 413-120-0830 the Department may not consent to an outgoing Convention adoption until at least 6 months after the child has been placed with the prospective adoptive parents. This post-placement supervision period may not be waived.

(2) The Department must keep the foreign authorized entity fully informed about the adoption process and the steps taken to complete the adoption.

(3) The Department must comply with the requirements of each of the following subsections:

(a) Monitor the child's adoption placement by reviewing the 90-day written progress reports received from the foreign authorized entity.

(b) Assess, based on the information in the 90-day reports, whether the child is adjusting to and being integrated into the prospective adoptive family's household.

(c) Complete all necessary steps related to the adoption assistance process, if applicable.

(4) When it becomes known to the Department that there are significant changes to the situation of the prospective adoptive parents, including changes in family structure, the Department may require an updated adoption home study prior to making a determination to proceed with finalization of the adoption.

(5) Prior to finalization of the adoption, when the local child welfare office determines the prospective adoptive parents are no longer appropriate for the child, the requirements of OAR 413-120-0870 apply.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

## 413-120-0945

### Finalization and Post-Finalization Duties

(1) After the post-placement supervision period has expired and before finalization of an outgoing Convention adoption the Department



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must submit to the foreign authorized entity proof of the Department's consent to the child's adoption.

(2) An outgoing Convention adoption must be finalized in Oregon pursuant to ORS 419B.529.

(3) Concurrent with finalization of the outgoing Convention adoption the Department must request an order from the court making all of the necessary findings required by the Convention and IAA to support an application for a Hague adoption certificate.

(4) After finalization of the outgoing Convention adoption the Department must apply for a Hague adoption certificate. To apply for a Hague adoption certificate the Department must submit all of the following to the Secretary of State:

(a) A completed Hague adoption certificate application on the form prescribed by the Secretary of State;

(b) A certified copy of the court's order finding that the child is eligible for adoption, that the adoption is in the child's best interest, granting the adoption, and verifying that the requirements of 22 C.F.R. 97.3 have been met; and

(c) Any other additional documentation and information required by the Secretary of State.

(5) For an outgoing Convention adoption, the Department must request two original Hague adoption certificates. The Department provides one original Hague adoption certificate to the adoptive parents and enters one original Hague adoption certificate into the sealed adoption record.

Stat. Auth.: ORS 417.262, 417.265, 418.005  
Stats. Implemented: ORS 417.262, 417.265, 418.005, 419B.529  
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

## 413-120-0950

### Adoption Assistance

To be eligible for adoption assistance a child who is the subject of a Convention adoption must be a United States citizen and meet all other eligibility requirements under Child Welfare Policy I-G.3.1 "Adoption Assistance", OAR 413-130-0000 to 413-130-0130.

Stat. Auth.: ORS 417.262, 417.265, 418.005  
Stats. Implemented: ORS 417.262, 417.265, 418.005  
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

## 413-120-0960

### Disclosure to the Adoptive Family

The Department must provide the prospective adoptive parents in an outgoing Convention adoption all the child summary and medical history, as defined in the Child Welfare Procedure Manual, in both the original format and translated into the primary language of the prospective adoptive parents.

Stat. Auth.: ORS 417.262, 417.265, 418.005  
Stats. Implemented: ORS 417.262, 417.265, 418.005  
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

## 413-120-0970

### Hague Custody Declarations

(1) When a child will be placed for adoption in a Convention country the Secretary of State may issue a Hague custody declaration acknowledging that legal custody of the child has been granted to prospective adoptive parents for the purpose of immigration and adoption in another Convention country. If the receiving Convention country requires a Hague custody declaration for placement of a child for adoption in the receiving Convention country, the Department must apply for and obtain a Hague custody declaration by completing the U.S. State Department's application and submitting the application with a court order with the proper findings supporting the application.

(2) The Hague custody declaration must accompany the child when the child leaves the United States and travels to the other Convention country.

Stat. Auth.: ORS 417.262, 417.265, 418.005  
Stats. Implemented: ORS 417.262, 417.265, 418.005  
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 24-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 12-29-10

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 413-010-0055

**Rules Repealed:** 413-010-0055(T)

**Subject:** OAR 413-010-0055 about when it is in a child's best interest for the Department to disclose a client's information is being amended in response to ORS 409.194 to state when the Director of the Department may convene a sensitive review committee to review the actions of the Department. This rule also is being amended to state when the Director must submit a written report of the findings and conclusions of the sensitive review committee to the President of the Senate and the Speaker of the House of Representatives. This rule is also being amended to make permanent temporary rule amendments adopted on July 19, 2010.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-010-0055

### Mandatory Disclosure if In the Child's Best Interest

(1) Unless client information is exempt from disclosure under another provision of law, and if disclosure is in the child's best interest, the Department shall disclose the client information records to the following persons:

(a) Employees of the Department of Human Services to the extent necessary to perform their official duties, determine the child's or family's eligibility for services, or provide services to the child or family;

(b) The Division of Child Support of the Department of Justice, when information is needed in order to locate children or absent parents, and to establish support for children in substitute care; and

(c) Treatment providers, foster parents, adoptive parents, school officials or other persons providing services to the child or family to the extent that such disclosure is necessary to provide services to the child or family. Such services include, but are not limited to, those provided by homemakers, intensive family service workers, foster parents, child care centers, private child caring agencies, treatment centers, Indian social service or child welfare agencies, physicians and other health care providers, mental health professionals, volunteers, student interns, child protection teams.

(2) Sensitive Review Committee.

(a) The Director of the Department of Human Services (Director) may choose to convene, either on the Director's own motion or upon a request of the President of the Senate or the Speaker of the House, a sensitive review committee for the purpose of reviewing the actions of the Department, in order to improve the quality of and strengthen child welfare practice in future cases. If the Director convenes a committee at the request of the President or the Speaker, then the Director shall submit the final written report to the President and the Speaker no more than 180 days after the committee was convened.

(b) Unless client information is exempt from disclosure under ORS Chapter 192 or another provision of law, and if disclosure is in the child's best interest, the Director or the Director's designee shall direct disclosure of relevant client information to persons appointed to a sensitive review committee convened by the Director.

(A) Any record disclosed to the committee members shall be kept confidential by the members of the committee and shall be used only for the purpose for which the record was disclosed.

(B) Any records disclosed to the committee members shall be returned to the Department upon completion of the review.

Stat. Auth.: ORS 409.194, 409.050 & 418.005  
Stats. Implemented: ORS 409.010, 409.194, 409.225 & 418.005  
Hist.: SOSCF 9-1999, f. 5-24-99, cert. ef. 6-1-99; CWP 17-2010(Temp), f. & cert. ef. 7-19-10 thru 1-15-11; CWP 24-2010, f. & cert. ef. 12-29-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 25-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 12-29-10

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 413-010-0081, 413-010-0082, 413-010-0083, 413-010-0085

**Rules Repealed:** 413-010-0084, 413-010-0086

**Subject:** These rules about the release of an adoption home study report are being changed to make permanent some temporary rules changes filed on July 1, 2010. OAR 413-010-0081 about the purpose of these rules is being amended to cross-reference rules that cover the release an adoption home study. OAR 413-010-0082 is being amended to cross-reference rules that define terms used in rules about the release of an adoption home study. OAR 413-010-0083 about the

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release of an adoption home study is being amended to cross-reference rules about confidentiality and release of adoption home studies. OAR 413-010-0084 about pre-release redaction of an adoption home study report is being repealed because this topic will be covered in another rule. OAR 413-010-0085 about the release of adoption home study summaries is being amended to cross-reference the rule that covers this topic. OAR 413-010-0086 about the process for release of an adoption home study report to the child's CASA, tribe, and attorney is being repealed because this topic is covered elsewhere in adoption policy, specifically Child Welfare Policy I-G.1.5, Adoption Placement Selection.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-010-0081

### General References Regarding Release of Adoption Home Studies

The topic of release of adoption home studies is covered in OAR 413-120-0016 and 413-120-0246.

Stat. Auth.: ORS 409.050, 418.005 & 419B.035

Stats Implemented: ORS 409.010, 409.225, 418.005 & 419B.035

Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06; CWP 18-2006, f. & cert. ef. 8-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 25-2010, f. & cert. ef. 12-29-10

## 413-010-0082

### Definitions

The topic of release of adoption home studies is covered in OAR 413-120-0016 and 413-120-0246. Some terms used in those rules are defined at 413-120-0010 and 413-120-0195.

Stat. Auth.: ORS 409.050, 418.005 & 419B.035

Stats Implemented: ORS 409.010, 418.005 & 419B.035

Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06; CWP 18-2006, f. & cert. ef. 8-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 25-2010, f. & cert. ef. 12-29-10

## 413-010-0083

### Confidentiality and Release of Adoption Home Study Reports

The topic of confidentiality and release of adoption home study reports is covered in OAR 413-120-0016 and 413-120-0246.

Stat. Auth.: ORS 409.050, 418.005 & 419B.035

Stats Implemented: ORS 409.010, 409.225, 418.005 & 419B.035

Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06; CWP 18-2006, f. & cert. ef. 8-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 25-2010, f. & cert. ef. 12-29-10

## 413-010-0085

### Release of Redacted or Summarized Adoption Home Study

The topic of release of redacted or summarized adoption home studies is covered in OAR 413-120-0016.

Stat. Auth.: ORS 409.050, 418.005 & 419B.035

Stats Implemented: ORS 409.010, 409.225, 418.005 & 419B.035

Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06; CWP 18-2006, f. & cert. ef. 8-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 25-2010, f. & cert. ef. 12-29-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 26-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 12-29-10

**Notice Publication Date:** 11-1-2010

**Rules Repealed:** 413-010-0360, 413-010-0370, 413-010-0380

**Subject:** These rules about the rights of persons who have a child-parent relationship being repealed because they no longer comply with federal placement priority for adoption selection, nor rights of persons who are certified as foster parents. OAR 413-010-0360 is being repealed because the rights of foster parents are established in ORS 418.648. OAR 413-010-0370 is being repealed because the definition no longer complies with the Department's policy and practice. OAR 413-010-0380 is being repealed because it no longer complies with federal preference for adoption placement selection.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 27-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 12-29-10

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 413-070-0514, 413-070-0516, 413-070-0518, 413-070-0519

**Rules Amended:** 413-070-0500, 413-070-0505, 413-070-0510

**Rules Repealed:** 413-070-0517

**Rules Ren. & Amend:** 413-070-0515 to 413-070-0512

**Subject:** These rules about achieving legal permanency, concurrent planning, and use of a permanency committee in making decisions for children in the care and custody of the Department, are being changed because the Department is redesigning the structure by which it makes these decisions. These rules set the requirements and responsibilities for the Department around seeking legal permanency for a child, the efforts make to identify and implement a concurrent permanent plan, and the parameters in which the Department will use a permanency committee in making a recommendation regarding a child's permanency. These rules incorporate into one rule set permanent rules regarding the use of a permanency committee filed in several sets of temporary rules filed on July 1, 2010. OAR 413-070-0500 about the purpose of these rules (OAR 413-070-0500 to 413-070-0519), OAR 413-070-0505 about the definitions used in these rules, OAR 413-070-0510 about the Department's obligation to seek legal permanency for a child in the legal custody of the Department, and OAR 413-070-0512 (re-numbered from OAR 413-070-0515) about concurrent planning are being amended. OAR 413-070-0514 about working with a child's team, OAR 413-070-0516 about the appropriate use of a permanency committee, OAR 113-070-0518 about the composition, scheduling, responsibilities and recommendations of a permanency committee, and OAR 413-070-0519 about the decision, notice and review of a permanency decision are being adopted. OAR 413-070-0517 about reasonable efforts, is being repealed. OAR 413-070-0500 is being amended to clarify the current Department policy, practice, and terminology. OAR 413-070-0505 about definitions used in these rules is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-070-0510 is about the Department's obligation to seek legal permanency and is being amended to clarify federal responsibility for reasonable efforts. OAR 413-070-0512 is being renumbered from 413-070-0515 and is being amended to describe the Department's efforts to seek family involvement in the development of a concurrent plan. OAR 413-070-0514 about the Department's obligation to work with a team of individuals in determining a child's current and permanency needs and how the plans to meet those needs are in the child's best interest is being adopted. OAR 413-070-0516 about the circumstances in which the Department uses a permanency committee for a recommendation on a child's permanency is being adopted. OAR 413-070-0517 about reasonable efforts is being repealed because this topic will be covered in OAR 413-070-0510. OAR 413-070-0518 is being adopted to set out policies about the composition, scheduling, responsibilities of committee members and recommendations that come from a permanency committee. OAR 413-070-0519 is being adopted to set out policies about the decision which is made after a permanency committee recommendation, notice requirements and the parameters of when a review of that decision may occur, who can request a review, and timelines in which such a review will occur.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-070-0500

### Purpose

These rules (OAR 413-070-0500 to 413-070-0519) describe the Department's responsibility to seek legal permanency for a child or young adult in the legal custody of the Department and the use of a permanency committee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 10-2000, f. & cert. ef. 4-28-00; SOSCF 42-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 27-2010, f. & cert. ef. 12-29-10

## 413-070-0505

### Definitions

The following definitions apply to OAR 413-070-0500 to 413-070-0519:

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(1) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(2) "CASA" means a court appointed special advocate: a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419A.170.

(3) "Child" means a person under 18 years of age.

(4) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency or adoption committee meeting.

(5) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The concurrent permanent plan is developed simultaneously with the plan to return the child to the parents or legal guardians.

(6) "Conditions for return" means a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.

(7) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of adoption;

(b) Has cared for the child or at least one sibling in a sibling group under consideration for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, the siblings in a sibling group under consideration for adoption in the same adoptive family.

(8) "General applicant" means an individual who:

(a) Is neither a relative or current caretaker; and

(b) Has submitted a completed application to adopt a child.

(9) "Indian child" means any unmarried person who is under age 18 and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(10) "Legal assistance specialist" means an Adoption Program staff member who provides consultation on the technical and legal processes to achieve a permanency plan for a child in the legal custody of the Department.

(11) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(12) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(13) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(14) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(15) "Refugee child" means, as defined under ORS 418.925, a person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion,

sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(16) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult; or an individual who self-identifies, related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for Guardianship Assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may only be considered a relative for the purpose of eligibility for Guardianship Assistance and only when the requirements of all of the following subparagraphs are met:

(i) There is a compelling reason why adoption is not an achievable permanency plan;



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(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) The Department has approved the foster parent for consideration as a guardian.

(17) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children or young adult's legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(18) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(19) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(20) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 10-2000, f. & cert. ef. 4-28-00; SOSCF 42-2001, f. 12-31-01, cert. ef. 1-1-02;

CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 27-2010, f. & cert. ef. 12-29-10

## 413-070-0510

### Obligation to Seek Legal Permanency

(1) Except as provided in section (3) of this rule, the Department must make reasonable efforts to preserve and reunify families:

(a) Prior to placing a child in substitute care to prevent or eliminate the need for removing the child;

(b) By establishing conditions for return described in OAR 413-040-0009 when a child is removed; and

(c) By implementing a permanency plan to make it possible for the child to safely return home.

(2) The Department must also make reasonable efforts to achieve the concurrent permanent plan for legal permanency through adoption or guardianship and to complete the steps necessary to finalize permanency.

(3) Reasonable efforts to prevent a child's placement in substitute care or safely reunite a child with the family are not required when a parent has subjected a child to aggravated circumstances as defined in ORS 419B.340.

(4) The Department must seek the court's approval prior to changing the permanency plan of a child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 10-2000, f. & cert. ef. 4-28-00; CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04;

CWP 27-2010, f. & cert. ef. 12-29-10

## 413-070-0512

### Development and Review of the Concurrent Permanent Plan

(1) When developing the permanency plan and concurrent permanent plan, the Department must:

(a) Describe the purpose of permanency and concurrent planning to the family;

(b) Involve the child's or young adult's parents, identified relatives, the CASA, attorneys, the tribe when the child is an Indian child, the RCWAC when the child is a refugee child, and other service providers, as appropriate;

(c) Provide full disclosure of the timelines under which the Department pursues permanency pursuant to federal and state law; and

(d) Describe the resources which may be available to relatives when adoption or guardianship is a permanency plan.

(2) The caseworker must:

(a) Develop a permanency plan and a concurrent permanent plan for each child in the Department's custody within 60 days of the placement of the child into substitute care; and

(b) Review the plan every 90 days, pursuant to Child Welfare Policy I-B.3.1, "Developing and Managing the Case Plan", OAR 413-040-0000 to 413-040-0032.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: SOSCF 10-2000, f. & cert. ef. 4-28-00; SOSCF 42-2001, f. 12-31-01, cert. ef. 1-1-02;

CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04; Renumbered from 413-070-0515 by CWP 27-2010, f. & cert. ef. 12-29-10

## 413-070-0514

### Working with a Child's Team Regarding a Permanency Plan and Concurrent Permanent Plan

(1) The caseworker must consult with a team of individuals, knowledgeable about the child or young adult's needs, including the ongoing assessment of the most appropriate permanency plan and concurrent permanent plan for the child or young adult, throughout the course of the case.

(a) The team must include the following individuals to the extent required in each of the following paragraphs:

(A) The parents, unless a supervisor approves not including a specified parent because the contact may compromise a child, young adult's, or another individual's safety; parental rights have been terminated; or the parent has signed a release and surrender agreement;

(B) The parent's attorney, unless parental rights have been terminated or the parent has signed a release and surrender agreement;

(C) The child or young adult, whenever developmentally appropriate;

(D) The CASA;

(E) A child or young adult's attorney;

(F) A tribal representative if the child or young adult is an Indian child; and

(G) A member of the RCWAC, if the child is a refugee child.

(b) The team may include:

(A) The child or young adult's substitute caregiver;

(B) The substitute caregiver's certifier;

(C) The child's or young adult's relatives;

(D) Persons with a caregiver relationship;

(E) Other individuals with involvement in the child or young adult's life; and

(F) Individuals with expertise in permanency.

(2) The caseworker utilizes the ongoing contact with these individuals to:

(a) Monitor the progress toward achieving the permanency plan;

(b) Provide the child or young adult, and the child or young adult's parents, the opportunity to identify available permanency resources should reunification not be achievable;

(c) Review the efforts to identify and place the child or young adult with a relative and to place siblings together;

(d) Consider the parents' acceptance of a plan other than reunification and their desire for continued contact with the child or young adult;

(e) Identify and consider which concurrent permanent plan best meets the child or young adult's current and lifelong needs for safety, permanency, and well-being in the following preferential order:

(A) Adoption;

(B) Guardianship, which may be considered only when there are compelling reasons why adoption cannot be achieved; or

(C) Another Planned Permanency Living Arrangement, which may be considered only when there are compelling reasons why adoption or guardianship cannot be achieved.

(3) After the caseworker has complied with section (2) of this rule and prior to considering a change in permanency plan, the caseworker must determine that the Department has taken action on the potential permanency resources identified by the child or young adult and the family of child or young adult, and must review with the child's team:

(a) The outcome of the assessment of potential permanency resources; and

(b) The Department's efforts to develop and maintain the child's relationship with potential permanency resources.

(4) When the caseworker determines a change in permanency plan should be considered, the caseworker must determine which permanency plan best:

(a) Meets the safety, permanency, and well-being of the child or young adult;

(b) Provides the child or young adult with support and connections in adulthood; and

(c) Must document the basis for the determination.

(5) The legal assistance specialist must approve changing the permanency plan to adoption prior to the caseworker recommending adoption to the court.

(6) The permanency committee must make recommendations and a Child Welfare Program Manager or designee must make the decision on behalf of the Department:

(a) To approve changing the permanency plan to guardianship or APPLA prior to the caseworker recommending the plan to the court; and

(b) To identify the substitute caregiver as the appropriate permanency placement resource for the plan of guardianship or APPLA.

Stat. Auth.: ORS 418.005

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Stats Implemented: ORS 418.005  
Hist.: CWP 27-2010, f. & cert. ef. 12-29-10

## 413-070-0516

### Use of Permanency Committee

A permanency committee must be scheduled when any of the following sections applies:

(1) The caseworker is recommending a change in permanency plan to guardianship. The permanency committee provides a recommendation based upon the considerations in OAR 413-070-0660 and OAR 413-070-0665.

(2) The caseworker is recommending a change in permanency plan to APPLA. The permanency committee provides a recommendation based upon the considerations in OAR 413-070-0550(1).

(3) A foster parent's request to be considered an adoptive resource as a current caretaker pursuant to Child Welfare Policy I-G.1.1, "Foster Parent Request for Consideration as a Current Caretaker", OAR 413-120-0500 to 413-120-0595. The permanency committee provides a recommendation based upon the considerations in OAR 413-120-0570.

(4) A caseworker is considering the separation of siblings in adoption. The permanency committee provides a recommendation based upon the considerations in OAR 413-110-0132.

(5) The caseworker requests that a permanency committee review the relationship between a general applicant and a child whose permanency plan is adoption. The permanency committee provides a recommendation based upon the considerations in OAR 413-120-0750(5).

Stat. Auth.: ORS 418.005  
Stats Implemented: ORS 418.005  
Hist.: CWP 27-2010, f. & cert. ef. 12-29-10

## 413-070-0518

### Composition, Scheduling, Responsibilities and Recommendations of the Permanency Committee

(1) Composition. A permanency committee includes the following individuals.

(a) Two individuals who have been appointed by a Child Welfare Program Manager to attend a permanency committee.

(A) A committee facilitator, who must be a Department staff member and who must ensure all of the following:

(i) The meeting is held according to the requirements of Chapter 413 of the Oregon Administrative Rules.

(ii) Individuals are informed of the responsibilities of the committee and the confidentiality of information presented during the meeting.

(iii) Thorough and accurate documentation of the committee recommendations.

(B) A second individual who may be either a community partner or another Department staff member.

(C) These two individuals must meet the requirements of all of the following paragraphs:

(i) Be knowledgeable about permanency issues.

(ii) Be knowledgeable of the importance of lifelong family attachment and cultural connections.

(iii) Have no current personal or professional relationship to the child or a potential placement resource or potential adoptive resource being considered.

(b) The following members of the child's team:

(A) The caseworker of the child or young adult;

(B) The attorney of the child or young adult;

(C) The CASA of the child or young adult;

(D) A tribal representative, if the child or young adult is an Indian child;

(E) A member of the RCWAC, if the child or young adult is a refugee child; and

(F) Any other individual from the child's team who a caseworker, in consultation with the supervisor, believes can provide important input into the issue before the permanency committee.

(2) The substitute caregiver of the child or young adult is invited to come and present information to the permanency committee, but is excused after presenting information and responding to questions.

(3) The Child Welfare Program Manager or designee responsible for making the decision on behalf of the Department attends the permanency committee and may ask clarifying questions, but does not participate in the deliberation and recommendation.

(4) Scheduling. The Department is responsible for scheduling and notifying the following individuals of the date, time, and location of the permanency committee.

(a) Appointed permanency committee members;

(b) The Child Welfare Program Manager or designee making a decision on the issue before the permanency committee;

(c) Each member of the child's or young adult's team identified in subsection (1)(b) of this rule; and

(d) Any other individual invited to present specific information to the permanency committee.

(5) Confidentiality. Each individual attending a permanency committee is bound by Oregon statutes regarding confidentiality and Child Welfare Policy I-A.3.2, "Confidentiality of Client Information" OAR 413-010-0000 to 413-010-0075.

(6) Consideration, review, and recommendation.

(a) The permanency committee must consider and review the information presented by any individual invited to the permanency committee, whether the information is presented in person, by phone, through other electronic communication, or in writing.

(b) The permanency committee may seek clarifying and request additional information during the presentations.

(c) The permanency committee must consider the safety, permanency, and well-being needs of the child or young adult and when there are siblings, the safety, permanency, and well-being needs of each sibling; and make a recommendation regarding the issue brought before the committee to the Child Welfare Program Manager or designee.

(d) When members of the permanency committee have not come to consensus on a recommendation, the committee facilitator must document all recommendations and the basis provided by the permanency committee member for that recommendation.

(e) The committee facilitator must provide the written documentation of the permanency committee's recommendation or recommendations to the Child Welfare Program Manager or designee within three business days of the date on which the permanency committee was held.

Stat. Auth.: ORS 418.005  
Stats Implemented: ORS 418.005  
Hist.: CWP 27-2010, f. & cert. ef. 12-29-10

## 413-070-0519

### Decision, Notice, and Review of the Decision

(1) Except to the extent that section (2) of this rule indicates otherwise, the Child Welfare Program Manager or designee must:

(a) Consider the recommendations of the permanency committee;

(b) Make a decision within one business day following the receipt of the written recommendations of the permanency committee; and

(c) Provide written notification of the decision and the basis of the decision to the caseworker on a form approved by the Department.

(2) When the decision of the permanency committee applies to changing a permanency plan to APPLA, the Child Welfare Program Manager must make the decision and cannot appoint a designee.

(3) The caseworker must notify the following individuals of the decision under section (1) of this rule:

(a) Each child or young adult, when required by law and developmentally appropriate;

(b) Each child's or young adult's attorney, if one has been appointed;

(c) Each child's or young adult's CASA, if one has been appointed;

(d) Each child's or young adult's tribal representative, when a child or young adult is an Indian child;

(e) The member of the RCWAC when a child or young adult is a refugee child; and

(f) Each child's or young adult's substitute caregiver.

Stat. Auth.: ORS 418.005  
Stats Implemented: ORS 418.005  
Hist.: CWP 27-2010, f. & cert. ef. 12-29-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 28-2010

**Filed with Sec. of State:** 12-29-2010

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**Rules Amended:** 413-070-0520, 413-070-0524, 413-070-0532, 413-070-0536, 413-070-0540, 413-070-0550, 413-070-0552, 413-070-0556, 413-070-0565

**Rules Ren. & Amend:** 413-070-0548 to 413-070-0551

**Subject:** These rules about another planned permanent living arrangement, and placement decisions for children in the care and custody of the Department, are being changed because the Department is redesigning the structure by which it makes these decisions and to make permanent some of the temporary rule changes filed on

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July 1, 2010. These rules set the requirements and responsibilities for the Department around changing a child's permanency plan to another planned permanent living arrangement. OAR 413-070-0520 about the purpose of the Department's Another Planned Permanent Living Arrangement (APPLA) rules, OAR 413-070-0524 about the definitions of certain terms used in these rules, OAR 413-070-0532 about the types of APPLA, OAR 413-070-0540 about how the Department determines an APPLA is the appropriate permanency plan for a child, OAR 413-070-0550 about how the Department reviews and approves an APPLA permanency plan are being amended to clarify the Department's policy for APPLA permanency plans, include definitions used throughout the APPLA rules, and reflect current Department policy, practice, and terminology. OAR 413-070-0524 also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-070-0536 about when APPLA may be considered is being amended to correctly identify defined terms. OAR 413-070-0540 also is being amended to reference proposed rules for the use of a permanency committee. OAR 413-070-0548 about the contents of an APPLA case plan is being renumbered to OAR 413-070-0551 and amended to clarify the process for requesting a change in the contents of a permanency plan. OAR 413-070-0550 also is being amended to state the Department methodology, practice, and decision-making when APPLA is considered as a permanency plan. OAR 413-070-0552 about ongoing Department responsibilities when APPLA is the child's or young adult's permanency plan is being amended to standardize cross-references and make the rule title better fit the contents of the rule. OAR 413-070-0565 about termination of APPLA is being amended to allocate responsibility for approving the termination of an agreement under serious or extraordinary circumstances and clarify the deadline for requesting a permanency hearing.

**Rules Coordinator:** Annette Tesch — (503) 945-6067

## 413-070-0520

### Purpose

The purpose of these rules (OAR 413-070-0520 to 413-070-0565) is to describe the responsibilities of the Department in case planning and the appropriate use of APPLA as a *permanency plan* for a *child or young adult*.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 28-2010, f. & cert. ef. 12-29-10

## 413-070-0524

### Definitions

The following definitions apply to these rules, OAR 413-070-0520 to 413-070-0565:

(1) "APPLA" means Another Planned Permanent Living Arrangement, a permanency plan for a stable secure living arrangement for a child or young adult that includes building relationships with significant people in the child's life that may continue after substitute care. APPLA is the least preferred permanency plan of the four permanency plan options for a child or young adult and is appropriate only in very limited circumstances.

(a) "Planned" means the arrangement is intended, designed, and deliberate.

(b) "Permanent" means enduring and stable.

(2) "Caregiver relationship" means a relationship between a person and a child or young adult that meets the requirements of all of the following subsections:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age. A caregiver relationship does not include a relationship between a child or young adult and a person who is an unrelated foster parent of the child or young adult unless the relationship continued for a period of at least 12 consecutive months.

(b) The person had physical custody of the child or young adult or resided in the same household as the child and provided the child or young adult on a daily basis with the love, nurturing, and other necessities required to meet the psychological and physical needs of the child or young adult.

(c) The child or young adult depended on the relationship to meet the needs of the child or young adult.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated children or young adults who are placed in the home by the Department.

(6) "Independent living housing subsidy" means a payment to assist in covering the cost of room, board, or other monthly expenses made to an eligible individual who is in the care and custody of the Department and living independently.

(7) "Indian child" means any unmarried person who is under age 18 and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(8) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(9) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(10) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(11) "Permanent foster care" means the out of home placement of a child in which there is a long-term foster care agreement between each substitute caregiver and the Department approved by the juvenile court under which the substitute caregiver commits to raise a child in substitute care until the age of majority and be accessible to and supportive of the child into adulthood, until the court determines that APPLA - permanent foster care is no longer the appropriate permanency plan for the child.

(12) "Relative caregiver" means a person who operates a Department approved home providing care for a related child or young adult placed into the home by the Department.

(13) "Substitute care" means the out-of-home placement of a child who is in the legal or physical custody and care of the Department.

(14) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(15) "Young adult" means a person 18 to 20 years of age who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005, 418.925, 419A.004(17)

Stats Implemented: ORS 418.005, 418.925, 419A.004(17))

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 28-2010, f. & cert. ef. 12-29-10

## 413-070-0532

### Types of APPLA

The caseworker considers one of the following types of APPLA when considering APPLA as a permanency plan for a child or young adult:

(1) APPLA — *permanent foster care*. An APPLA — permanent foster care is a plan in which the child or young adult remains in a substitute care placement with a *substitute caregiver* who has:

(a) Committed to the care and well-being of the child or young adult; and

(b) Entered into a permanent foster care agreement.

(2) APPLA — permanent connections and support. An APPLA — permanent connections and support plan is a plan in which:

(a) A child or young adult is in substitute care living with a substitute caregiver or living independently and receiving an independent living housing subsidy and the plan focus is not only on the child's or young adult's educational, vocational, health, and treatment needs, but also on the needs



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of the child or young adult to develop or maintain relationships with adults, including relatives and persons with a caregiver relationship, who can play a significant role in the child's or young adult's life after the child or young adult leaves substitute care; or

(b) A child or young adult is in a psychiatric residential facility, Developmental Disabilities placement, or residential treatment facility and is not going to be discharged from the facility while the Department maintains legal custody of the child or young adult.

Stat. Auth.: ORS 418.005 & 419A.004(17)

Stats Implemented: ORS 418.005 & 419A.004(17)

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 28-2010, f. & cert. ef. 12-29-10

## 413-070-0536

### Consideration of APPLA as a Permanency Plan

(1) The Department may consider APPLA as a permanency plan for a child or young adult only if the Department has determined that there is a compelling reason that it is not in the best interests of the child to implement one of the following preferred permanency plans, listed in order of preference:

(a) Placement with a parent;

(b) Placement in an adoptive home which includes permanent placement with a fit and willing relative through the adoption; or

(c) Placement with a legal guardian which includes permanent placement with a fit and willing relative as a guardian.

(2) Prior to consideration of a foster parent as the APPLA resource, the caseworker and the caseworker's supervisor have complied with the requirements of both of the following subsections:

(a) Reviewed the Department's diligent efforts to identify, contact, and place a child or young adult with relatives and to place siblings together as required under Child Welfare Policy I-E.1.1, "Search for and Engagement of a Child's Relatives", OAR 413-070-0060 to 413-070-0087.

(b) Confirmed there are no current Department actions to identify or assess a child's or young adult's relative who has either expressed an interest in and needs to be or currently is being assessed as a permanency resource.

(3) The Department must base consideration of each permanency plan on the individual safety, permanency, and well-being needs of a child or young adult. A child's age or disability is never a disqualifier for a more preferred permanency plan.

Stat. Auth.: ORS 109.328, 418.005

Stats Implemented: ORS 109.328, 418.005

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 28-2010, f. & cert. ef. 12-29-10

## 413-070-0540

### Determination of APPLA as a Child's or Young Adult's Permanency Plan

(1) When the Department is considering a change in a child or young adult's permanency plan, the Department makes the determination pursuant to Child Welfare Policy I-E.3.6, "Legal Permanency, Concurrent Planning, and Use of Permanency Committee", OAR 413-070-0500 to 413-070-0519.

(2) Prior to the permanency committee, when APPLA — permanent foster care is being considered as the most appropriate permanency plan for a child or young adult, the caseworker must:

(a) Meet with the substitute caregiver to:

(A) Assess interest in and commitment to a permanent foster care agreement with each substitute caregiver as long as APPLA — permanent foster care is the permanency plan for the child or young adult; and

(B) Review the requirements, responsibilities, and approval process for the permanent foster care agreement with each substitute caregiver.

(b) Meet with the child or young adult, as developmentally appropriate, to assess interest in APPLA - permanent foster care as the permanency plan.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005, 418.937, 418.941, 419A.004

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 28-2010, f. & cert. ef. 12-29-10

## 413-070-0550

### Approval and Implementation of an APPLA Permanency Plan

(1) The permanency committee must consider the best interests of the child or young adult under consideration and consider each of the following factors when making a recommendation regarding APPLA:

(a) How an APPLA permanency plan meets safety, permanency, and well-being needs of the child or young adult, and is in the best interests of the child or young adult.

(b) Whether the Department has provided the child or young adult, and the child or young adult's parents, an opportunity to identify available permanency resources.

(c) The parents' acceptance of APPLA as a permanency plan and their desire for continued contact with the child or young adult.

(d) Whether the child or young adult's substitute caregiver is able to meet the child or young adult's needs pursuant to OAR 413-070-0640 in Child Welfare Policy I-E.3.1, "Placement Matching".

(e) Consideration of each of the more preferred permanency plans described in OAR 413-070-0536(1) and identification of the compelling reasons why return home, adoption, or guardianship cannot be achieved.

(f) When the child or young adult has siblings, the sufficiency of the plan for continued contact unless such contact is not in the best interests of the child or young adult and each sibling.

(2) After completing the review under section (1) of this rule, the permanency committee considers all of the information, deliberates, and, when committee members agree, makes a recommendation to the Child Welfare Program Manager or designee.

(3) When the permanency committee cannot reach agreement, each permanency committee member makes his or her respective recommendations known to the committee facilitator.

(4) The Child Welfare Program Manager, or designee who makes the decision on behalf of the Department, must consider all of the following when making the decision:

(a) The considerations in section (1) of this rule.

(b) The information presented to the permanency committee.

(c) The recommendation of the permanency committee.

(5) Within 30 days of the Department's decision to approve an APPLA permanency plan under OAR 413-070-0519, the caseworker must request a permanency hearing before the court. At the court hearing, the caseworker must:

(a) Recommend that the court issue an order approving the APPLA plan;

(b) Set forth the compelling reasons why it would not be in the best interests of the child or young adult to return home, be placed for adoption, or be placed with a guardian;

(c) Set forth a timetable for the child or young adult's placement in another planned permanent living arrangement;

(d) Set forth the reasonable services the Department may offer each parent to meet the best interests of the child or young adult until a more preferred permanency plan is achieved, the child reaches the age of majority, reaches independence, or the juvenile court relieves the Department of legal custody of the child or young adult; and

(e) Set forth the type and amount of parent-child and child-sibling contact and involvement until a more preferred permanency plan is achieved, the child reaches age of majority, reaches independence, or the juvenile court relieves the Department of legal custody of the child or young adult.

(6) When the court previously has ordered or the Department recommends that no contact be allowed between parent and child, or child and sibling, the caseworker must request that the court issue a standing protective order, including the reasons why no contact is allowed.

(7) When the APPLA plan does not receive Department approval, within 30 days the caseworker must:

(a) Inform the child or young adult, the child's or young adult's substitute caregivers, the child's or young adult's parents, the child's or young adult's attorney, the child's court appointed special advocate, and other persons with significant involvement in the child's or young adult's life; and

(b) Consult with the child's team to reconsider the child's or young adult's other permanency options.

Stat. Auth.: ORS 418.005, 419A.004(17)

Stats Implemented: ORS 418.005, 419A.004(17)

Hist.: CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 28-2010, f. & cert. ef. 12-29-10

## 413-070-0551

### Contents of an APPLA Case Plan

(1) When requesting the change to a permanency plan of APPLA to the court, the caseworker must document how the Department plans to address each subsection of this section in the child or young adult's case plan. The case plan must include the following information:

(a) Family composition, which includes the identifying information of each parent (unless parental rights have been terminated), legal guardian, and sibling.

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(b) Except when parental rights have been terminated, safety threats identified in a CPS assessment under Child Welfare Policy I-AB.4, "CPS Assessment", OAR 413-015-0400 to 413-015-0485.

(c) Except when parental rights have been terminated, the ongoing safety plan as described in Child Welfare Policy I-AB.4, "CPS Assessment" OAR 413-015-0400 to 413-015-0485 and recorded in the Department's information system.

(d) A description of how the Department determined the APPLA is the most appropriate permanency plan for the child or young adult, and each compelling reason why the more preferred permanency plan options were not selected for the child or young adult.

(e) A description of how the child or young adult's attachments and relationships with each parent, sibling, other family member, advocate, substitute caregiver, and other person who provides continuity, belonging, stability, support, nurturing, and caring relationships and cultural connections for the child may be developed while the child is in substitute care and maintained when the child reaches the age of majority or the juvenile court relieves the Department of legal custody of the child or young adult. When appropriate, the description may include the following:

(A) A description of how each parent and sibling of the child or young adult may participate actively in the life of the child or young adult.

(B) For each existing relationship the child or young adult has with a permanent adult caregiver or adult parental figure who is capable of sustaining a significant relationship with the child or young adult, a description of how the relationship may be maintained.

(C) A description of how relationships with relatives and other persons involved in the child or young adult's life may be developed and maintained.

(D) Current placement information including the location of the child or young adult when the substitute caregiver authorizes release of the address, except when doing so would jeopardize the safety of the child.

(E) The child or young adult's record of visits with his or her parents or siblings.

(f) When applicable, a description of the plan to transition a developmentally delayed child to an appropriate program for adults who are developmentally delayed.

(g) The comprehensive transition plan required by Child Welfare Policy I-B.2.3.5, "Youth Transitions", OAR 413-030-0400 to 413-030-0460 for any child 14 years of age or older and services that prepare the child or young adult to transition to adulthood.

(h) A description of the reasonable efforts made by the Department to put the services and structures described in this rule in place to meet the needs of the child or young adult and to enhance the stability of the child's living arrangement when the child or young adult is not living with a specified adult.

(i) A description of the services the Department must provide to ensure the emotional, medical, educational, cultural, and physical needs of the child or young adult are being met, including:

(A) The child or young adult's health information, which documents the child or young adult's specialized medical, dental, and mental health services; and

(B) The child or young adult's education services, including the school or educational placement history of the child or young adult, high school credits earned for a child over 14 years of age or a young adult, and any special educational needs.

(j) The services required to prepare the child or young adult to live in the least restrictive setting possible at the most appropriate time.

(k) The services that may make it possible to achieve a more preferred permanency plan listed in OAR 413-070-0536(1) for the child or young adult.

(l) The services the Department may continue to make available to the child or young adult's parents, upon request, that continue to be in the best interests of the child or young adult.

(2) Except when parental rights have been terminated or the Department is unable to obtain the signature of the parent or legal guardian, the case plan must include the signature of the caseworker, the supervisor, and each parent or legal guardian as described in Child Welfare Policy I-B.3.1, "Developing and Managing the Case Plan", OAR 413-040-0000 to 413-040-0032.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005, 419A.004

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09;

Renumbered from 413-070-0548, CWP 28-2010, f. & cert. ef. 12-29-10

## 413-070-0552

### Ongoing Department Responsibilities When APPLA is the Child's or Young Adult's Permanency Plan

(1) When APPLA is the court approved permanency plan for a child or young adult in the Department's legal custody, the child or young adult's caseworker must:

(a) Discuss the child or young adult's needs with the substitute caregiver and the child or young adult during face to face and other contacts, and routinely discuss needs, benefits, barriers, and solutions towards achieving a more preferred permanency option;

(b) Have contact with the child or young adult, with the substitute caregiver, and monitor child or young adult safety as described in Child Welfare Policy I-B.1, "Monitoring Child Safety", OAR 413-080-0040 to 413-080-0067;

(c) Provide timely assessment and services for identified needs of the child or young adult, the child or young adult's substitute caregiver, or the child or young adult's parents;

(d) As soon as possible after the child reaches 14 years of age initiate comprehensive transition planning as described in Child Welfare Policy I-B.2.3.5, "Youth Transitions", OAR 413-030-0400 to 413-030-0460;

(e) Ensure an annual review of Department efforts to identify and contact a child or young adult's relatives and efforts to place with or develop and maintain a child or young adult's connection and support with relatives is completed;

(f) Monitor the case plan and complete the required case plan reviews; and

(g) Submit to the court and to the citizen review board the case plan updates required in Child Welfare Policy I-I.2, "Narrative Recording", and, when the APPLA plan is APPLA — permanent foster care, submit a copy of the permanent foster care agreement.

(2) In addition to the requirements of section (1) of this rule, when the child or young adult has an approved APPLA — permanent foster care plan:

(a) The Department must continue to assess requirements for certification of a foster home pursuant to Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0270 to 413-200-0296; and

(b) The substitute caregiver must:

(A) Maintain a current Certificate of Approval and follow the requirements of the Department pursuant to Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396;

(B) Follow the requirements of the Department regarding a child or young adult's education, medical care, mental health care, and other services requested by the Department to meet the needs of the child or young adult;

(C) Maintain residence in the state of Oregon unless the ICPC referral has been submitted to the receiving state and approval to move has been obtained from the Department and the court prior to the move outside of Oregon; and

(D) Maintain residence in the ICPC approved state if the substitute caregiver lives in another state.

Stat. Auth.: ORS 418.005 & 419A.004(17)

Stats Implemented: ORS 418.005 & 419A.004(17)

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 28-2010, f. & cert. ef. 12-29-10

## 413-070-0556

### APPLA Permanency Plan Reviews

(1) The caseworker must review the APPLA case plan at least every six months and the review must occur prior to a review by the court or citizen review board as required by ORS 419B.470 and 419A.106(1) respectively.

(a) The review must take place in a face-to-face meeting with the child or young adult, and may include members of the team of the child or young adult.

(A) When appropriate, the meeting may include a parent or legal guardian, unless the parent or legal guardian is not available for the review. When a parent or legal guardian is unavailable, the caseworker must document the reason the parent or legal guardian was unavailable and the efforts made to involve the parent or legal guardian.

(B) During the meeting the caseworker must consider input received from the child or young adult, other participants in the meeting, and other information received from service providers, substitute caregivers, a child or young adult's attorney, a child or young adult's court appointed special

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advocate, the tribe if the child is an ICWA child, persons with significant attachments to the child or young adult, and a child or young adult's relatives.

(b) After the meeting described in subsection (a) of this section, the caseworker must document in the case record:

(A) Whether the current placement continues to be the least restrictive setting available to meet the safety and permanency needs of the child or young adult; or

(B) Whether a more permanent permanency plan, such as reunification, adoption, or guardianship is more appropriate for the child or young adult.

(2) When an APPLA has been approved by the court as the permanency plan for a child or young adult in the legal custody of the Department, the Department must notify the court and request a review or permanency hearing:

(a) Not less frequently than once every 12 months while the child or young adult remains in substitute care in accordance with ORS 419B.470(2).

(b) Unless good cause is shown, at any time upon the request of the Department, a substitute caregiver directly responsible for the care of the child or young adult, a parent of the child or young adult, an attorney for the child or young adult, a court appointed special advocate, a citizen review board, or a tribal court in accordance with ORS 419B.470(5).

(c) By the citizen review board no less frequently than every six months in accordance with ORS 419A.106(1)(a) unless the court has relieved the citizen review board of its responsibility to review a case in accordance with ORS 419A.106(1)(b).

(d) Within 90 days of a change of *substitute care* placement.

Stat. Auth.: ORS 418.005, 419A.004(17), 419B.470

Stats Implemented: ORS 418.005, 419A.004(17), 419B.470

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 28-2010, f. & cert. ef. 12-29-10

## 413-070-0565

### Termination of APPLA

(1) The APPLA - Permanent Connections and Support must be terminated when:

(a) Court wardship is terminated;

(b) The court relieves the Department of legal custody of the child or young adult; or

(c) The court determines that APPLA — Permanent Connections and Support is no longer the appropriate permanency plan for the child or young adult.

(2) The APPLA — permanent foster care plan and agreement must be terminated when:

(a) The child reaches the age of majority under ORS 419A.004(17);

(b) Court wardship is terminated;

(c) The court determines that APPLA — permanent foster care is no longer the appropriate permanency plan for the child;

(d) One of the more preferred permanency plans described in OAR 413-070-0536(1) is achieved;

(e) The Department and the substitute caregiver mutually consent to termination;

(f) The foster parent or relative caregiver fails to maintain a current Certificate of Approval in accordance to Child Welfare Policies II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396 and II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents and Pre-Adoptive Parents", OAR 413-200-0270 to 413-200-0296, including when the certificate has been revoked or denied;

(g) The child or young adult is removed from the substitute caregiver by the Department; or

(h) The child or young adult requests, and a Child Welfare Program Manager approves, termination of the agreement because of serious or extraordinary circumstances.

(3) The Department must provide written notification to the court of any change in the placement of the child or young adult.

(4) If a child or young adult is removed from court approved APPLA — permanent foster care, the caseworker must request a permanency hearing within 90 days after the date of the change in placement to review the permanency plan for the child or young adult under ORS 419B.470(3).

Stat. Auth.: ORS 418.005, 419A.004(17), 419B.470

Stats. Implemented: ORS 419A.004(17) & 419B.470

Hist.: CWP 17-2009, f. & cert. ef. 11-3-09; CWP 28-2010, f. & cert. ef. 12-29-10

**Rule Caption:** Changing OARs affecting Child Welfare programs.

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**Rules Amended:** 413-070-0600, 413-070-0620, 413-070-0625, 413-070-0630, 413-070-0640, 413-070-0645

**Subject:** OAR 413-070-0600, 413-070-0620, 413-070-0625, 413-070-0630, 413-070-0640, and 413-070-0645 about placement matching for children and young adults in substitute care are being amended to reflect current Department terminology, policy, and practices. These amendments incorporate policies and practices developed as the Department sought to comply with federal and state laws regarding temporary and permanent placement selection. The amended rules lend clarity by refining new terms implemented with the terminology, policy, and practice changes regarding permanency placement matching, and permanency placement decisions for children in the care and custody of the Department. OAR 413-070-0600 also is being amended to restate the purpose of these rules is to describe the Department's responsibilities for placement matching during both substitute care and when planning for permanency. OAR 413-070-0620 defining certain terms used in these rules also is being amended to amend the definitions of CANS screening, caregiver relationship, Indian child, and relative. OAR 413-070-0625 about identifying and assessing the needs of a child or young adult when placement in substitute care is required also needs to be amended to state the placement preferences for a child in substitute care. OAR 413-070-0630 about monitoring the ongoing substitute care placement need of the child or young adult also needs to be amended to restate language about the factors to assess when monitoring the needs of the child in substitute care. OAR 413-070-0640 about placement assessment and matching also needs to be amended to restate the assessment and matching requirements for substitute care and for permanency placement resources. OAR 413-070-0645 about involving the substitute caregiver in the concurrent permanency plan also is being amended to clarify cross-references and terms used.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-070-0600

### Purpose

The purpose of these rules (OAR 413-070-0600 to 413-070-0645) is:

(1) To describe the requirements for assessing the needs of the child or young adult when the Department places the child or young adult in substitute care to assure the child's safety;

(2) To identify the most appropriate available substitute caregiver who can meet the needs of the child or young adult; and

(3) To describe the requirements for assessing and matching a potential caregiver's ability to meet the current and lifelong needs of the child or young adult for safety, permanency, and well-being.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10

## 413-070-0620

### Definitions

The following definitions apply to OAR 413-070-0600 to 413-070-0645:

(1) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of integrating information on the needs and strengths of a child or young adult. The Department uses a CANS screening for the following purposes:

(a) Case planning, service planning, determining the supervision needs, and the level of care for the child or young adult in substitute care with a certified family; and



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(b) Determining the level of care included in an Adoption Assistance payment or Guardianship Assistance payment.

(3) "Caregiver relationship" means a relationship between a person and a child or young adult that meets the requirements of all of the following subsections:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age. A caregiver relationship does not include a relationship between a child or young adult and a person who is an unrelated foster parent of the child or young adult unless the relationship continued for a period of at least twelve consecutive months.

(b) The person had physical custody of the child or young adult or resided in the same household as the child and provided the child or young adult on a daily basis with the love, nurturing and other necessities required to meet the psychological and physical needs of the child or young adult.

(c) The child or young adult depended on the relationship to meet the needs of the child or young adult.

(4) "Child" means a person under 18 years of age.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "Indian child" means any unmarried person who is under age 18 and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(9) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(10) "Refugee child" means, as defined under ORS 418.925, a person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(11) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been

filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult; or an individual who self-identifies, related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for Guardianship Assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may only be considered a relative for the purpose of eligibility for Guardianship Assistance and only when the requirements of all of the following subparagraphs are met:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) The Department has approved the foster parent for consideration as a guardian.

(12) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(15) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute

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care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

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

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10

## 413-070-0625

### Identifying and Assessing the Child or Young Adult's Needs when Placement in Substitute Care is Required

(1) To select a substitute care placement that will meet the safety, permanency, and well-being needs of the child or young adult, the caseworker must:

(a) Involve the parent or legal guardian of the child or young adult and the child or young adult as developmentally appropriate in identifying substitute care placement resources whenever possible.

(b) Assess the ability of each potential substitute caregiver to provide safety for the child or young adult.

(c) Assess the potential substitute care placements in the order of preference under OAR 413-070-0220 and 413-070-0320, when the child or young adult is an Indian child or refugee child.

(d) Except as provided in subsection (c) of this section, assess the potential substitute care placements in the following order of preference:

(A) A relative of the child or young adult who can be certified by the Department;

(B) A person who has a caregiver relationship with the child or young adult and can be certified by the Department;

(C) A foster parent who is certified by the Department, or a provider who is approved through a licensed child-caring agency.

(e) Consider the use of a family meeting to seek the family's placement preferences if more than one person requests to have the child or young adult placed with them; and

(f) Consider whether the potential substitute care placement --

(A) Has the ability to provide safety for the child or young adult and, when there are one or more siblings, each of the siblings;

(B) Is willing to cooperate with any restrictions placed on contact between the child or young adult, and others;

(C) Has the ability to prevent anyone from influencing the child or young adult in regard to the allegations of the case;

(D) Has the ability to support the efforts of the Department to implement the permanent plan for the child or young adult; and

(E) Has the ability to meet the physical, emotional, and educational needs of the child or young adult, including the need of the child or young adult to continue in the same school or educational placement.

(g) Ensure that the substitute care placement is the most home-like, least restrictive available to meet the needs of the child or young adult.

(h) Assure that the race, color, or national origin of the child, young adult, or substitute care placement is not a consideration when assessing a substitute care placement.

(2) When a child or young adult is placed in substitute care and has a sibling who is currently in or also needs substitute care, the caseworker must make diligent efforts to place siblings together unless placing the siblings together is not in the best interests of the child or young adult, or the sibling of the child or young adult.

(3) Within 30 days of the placement of the child or young adult in a substitute care setting, the caseworker must reconsider whether the substitute caregiver is able to meet the requirements in subsection (1)(f) of this rule and assess whether the following placement considerations are met:

(a) The placement is in close proximity to the parents or legal guardians of the child or young adult;

(b) The placement is in close proximity to the community of the child or young adult;

(c) If in the best interests of the child and siblings as set forth in section (2) of this rule, the siblings are together in placement; and

(d) The culture and family identity of the child or young adult are supported by the placement.

(4) After consultation with the supervisor, when the caseworker determines the substitute care placement does not meet one or more of the placement considerations in subsection (1)(f) or section (3) of this rule, the caseworker must:

(a) Determine whether remaining in the substitute care placement is in the best interests of the child or young adult;

(b) Work with Department staff to secure another substitute care placement for the child or young adult when appropriate; and

(c) Document the basis for the determination and subsequent actions in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10

## 413-070-0630

### Monitoring the Ongoing Substitute Care Placement Needs of the Child or Young Adult

(1) The caseworker must monitor the substitute care placement of the child or young adult and determine whether the relative caregiver, foster parent, or provider:

(a) Meets the placement considerations of OAR 413-070-0625; and  
(b) Manages the supervision needs of the child or young adult as identified in the CANS screening and other current assessments or evaluations of the child or young adult.

(2) The caseworker must assess the ongoing and permanency needs of the child or young adult:

(a) For physical and emotional safety;

(b) To promote and preserve existing attachments to family;

(c) For continuity and familiarity;

(d) For appropriate educational, developmental, emotional, and physical support;

(e) For stability and permanency; and

(f) For maintaining his or her identity and cultural and religious heritage.

(3) During the required face-to-face contacts with the child or young adult, the caseworker must:

(a) Confirm that the substitute caregiver can maintain the safety and well-being of the child or young adult, as described in Child Welfare Policy I-B.1, "Monitoring Child Safety", OAR 413-080-0059(2)(a) when the child or young adult is with a relative caregiver or foster parent or OAR 413-080-0059(3) when the child or young adult is with a provider;

(b) Develop and maintain a good working relationship with the child or young adult;

(c) Observe the child or young adult in an age-appropriate and comfortable setting;

(d) Gather updated information on the physical and mental health as well as educational, behavioral, and developmental progress of the child or young adult;

(e) Share updated information about the case plan and permanency plan for the child or young adult with the substitute caregiver and as permitted by state or federal law; and

(f) Document the date, time, and location of the contact, observations, and updated information in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10

## 413-070-0640

### Placement Assessment and Matching

(1) The caseworker must assess the extent to which the ongoing needs of the child or young adult for safety, permanency, and well-being:

(a) Are currently met in substitute care at each 90 day case plan review; and

(b) Will be met with a potential adoptive resource or potential guardian during the permanency planning process.

(2) Physical and emotional safety. To determine the extent to which the placement, potential adoptive resource, or potential guardian meets the needs for physical and emotional safety of the child or young adult, the caseworker must determine whether the following conditions exist in the home.

(a) The substitute caregiver, potential adoptive resource, or potential guardian has the skill level or willingness to acquire the skills necessary to meet the physical, emotional, and supervisory needs for the child or young adult;

(b) The substitute caregiver, potential adoptive resource, or potential guardian has the skill level to care for this child or young adult given the age, number, and gender of all other children or young adults in the home;

(c) The behavioral characteristics of children or young adults currently in the placement are such that the substitute caregiver, potential adoptive resource, or potential guardian can protect the child or young adult from further victimization and from harming self or others;

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(d) The substitute caregiver, potential adoptive resource, or potential guardian has the ability to protect the child or young adult from inappropriate contact with those who may harm the child or young adult; and

(e) The physical layout of the home permits the substitute caregiver, potential adoptive resource, or potential guardian to safely supervise the children or young adults in the home.

(3) Attachment to family. To determine the extent to which the placement, potential adoptive resource, or potential guardian meets the need of the child or young adult to promote and preserve attachment to his or her family, the caseworker must consider whether:

(a) The family of the child or young adult has expressed a preference in placement;

(b) The child or young adult has requested a particular placement;

(c) The relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian demonstrates the ability --

(A) To promote and support the attachment of the child or young adult through visitation and other types of contact with the family of the child or young adult;

(B) To accommodate the placement of the siblings of the child or young adult in the home;

(C) To accommodate regular contact between the child or young adult and his or her siblings when the child or young adult is not placed with his or her siblings and regular contact is in the best interests of the child or young adult; and

(D) To provide mutual care when both the child and parent require placement. As used in this rule, "mutual care" means the out-of-home placement of a parent and child together where one or both are in the legal custody of the Department.

(4) Continuity and familiarity. To determine the extent that the placement, potential adoptive resource, or potential guardian meets the need of the child or young adult for continuity and familiarity, the caseworker must consider:

(a) The extent of the pre-existing relationship of the child or young adult with the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian;

(b) The proximity of the placement to the neighborhood, school, or educational placement of the child or young adult, and parent or legal guardian; and

(c) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian can provide a permanent home or facilitate transition to a permanent home for the child or young adult.

(5) To determine the extent that a particular placement, potential adoptive resource, or potential guardian meets the need of the child or young adult for appropriate educational, developmental, emotional, and physical support, the caseworker must consider:

(a) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian demonstrates competency in meeting the specific and unique needs of the child or young adult or is acquiring the skills necessary to meet specific and unique needs of the child or young adult;

(b) Whether the ability of the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian to meet the specific and unique needs of the child or young adult is influenced by the number and type of children in the home; and

(c) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian is willing and able to assist with, participate in, and act as an advocate for the child or young adult in his or her education and treatment plan.

(6) Permanent family relationships. To determine the extent that a potential adoptive resource or potential guardian meets the need of the child or young adult for a current and lifelong family relationship, the caseworker must consider:

(a) Whether the potential adoptive resource or potential guardian can permanently integrate the child into the family during childhood.

(b) Whether potential adoptive resource or potential guardian will be accessible and supportive to the child in adulthood.

(7) Stability. To determine the extent to which the placement, potential adoptive resource, or potential guardian meets the need of the child or young adult for stability, the caseworker must consider:

(a) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian has expressed a desire to provide permanency for a particular child or young adult;

(b) Whether the ability of the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian to provide sup-

port and to nurture the child or young adult is influenced by the number of children or young adults in the home; and

(c) Whether the capacity of the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian to recognize the needs of the child or young adult, and build on the strengths of the child or young adult, is sufficient to meet the long-term or lifelong placement needs of the child or young adult.

(8) Identity, development, cultural, religious, and spiritual background and connections. To determine whether the placement, potential adoptive resource, or potential guardian can support the identity, development, and cultural and religious or spiritual background and connections of the child or young adult, the caseworker must consider:

(a) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian has the ability to appreciate, nurture, support, and reinforce the identity, development, cultural, religious and spiritual background and connections of the child or young adult;

(b) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian has the ability to support the development of the child or young adult, and help the child or young adult with problems that the child or young adult may encounter;

(c) Whether the relative caregiver, foster parent, provider, potential adoptive resource, or potential guardian has the ability to communicate effectively with the child or young adult; and

(d) Whether the child or young adult has adjusted to the placement or is able to adjust to a guardian's home or an adoptive home.

(9) After making the determinations in sections (2) to (8) of this rule, the caseworker must document the extent to which the need of the child or young adult for safety, permanency, and well-being are or can be met:

(a) In the documentation of the 90-day case plan review when the child is in substitute care; or

(b) In the documentation of the selection of a guardian or adoptive resource.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10

## 413-070-0645

### Involving the Substitute Caregiver in the Concurrent Permanency Plan

The caseworker must:

(1) Determine whether the relative caregiver, foster parent, or provider is willing to continue as the placement resource, has the skills and abilities to meet the need of the child or young adult for safety and well-being, and is willing to work with the Department while the concurrent permanent plan for the child or young adult is implemented by the Department; and

(2) Provide the relative caregiver, foster parent, or provider with the opportunity to have input into a permanency plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 30-2010

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**Certified to be Effective:** 12-29-10

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 413-110-0132, 413-110-0150

**Rules Amended:** 413-110-0100, 413-110-0110, 413-110-0130

**Rules Repealed:** 413-110-0120, 413-110-0140

**Subject:** OAR 413-110-0100 about the purpose of the Department's sibling permanency placement planning rules (OAR 413-110-0100 to 413-110-0150), OAR 413-110-0110 about the definitions used in these rules, and OAR 413-110-0130 about the Department's priorities when developing a permanency plan for siblings, are being amended; and OAR 413-110-0132 about how the Department considers and determines whether to adopt a permanency plan recommending permanent separation of siblings and OAR 413-110-0150 about the Department's recruitment efforts to identify a potential guardian or adoptive resource who can initiate and maintain connections between siblings when separation of siblings has occurred



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as a result of a Department action or decision are being adopted; and OAR 413-110-0120 about the values the Department considered when developing a permanency plan for siblings and OAR 413-110-0140 about how the Department reviews and the notice the Department provides regarding a permanency committee recommendation regarding permanent separation of siblings are being repealed. These rule changes clarify the Department's policy regarding permanency plans resulting in separation of siblings, include definitions used throughout these rules; reflect current Department policy, practice, and terminology; and make permanent a number of changes initially adopted by temporary rule changes on July 1, 2010.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-110-0100

### Purpose

These administrative rules (OAR 413-110-0100 to 413-110-0150) describe the Department's case planning responsibility to maintain and support lifelong sibling relationships for a child in the legal custody of the Department whose permanency plan is adoption.

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 8-2006, f. & cert. ef. 5-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 30-2010, f. & cert. ef. 12-29-10

## 413-110-0110

### Definitions

The following definitions apply to these rules, OAR 413-110-0100 to 413-110-0150:

(1) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(2) "Child" means a person under 18 years of age.

(3) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency committee or adoption committee meeting.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(6) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(7) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children's or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(8) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

Stat. Auth.: ORS 418.005, 418.925, 418.937, 418.945, 419B.192

Stats. Implemented: ORS 418.005, 418.925, 418.937, 418.945, 419B.192

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 8-2006, f. & cert. ef. 5-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 30-2010, f. & cert. ef. 12-29-10

## 413-110-0130

### Consideration of Sibling Placement

(1) The Department's first priorities for placement of a child in the legal custody of the Department are placement with relatives and placing siblings together.

(2) When any child in the legal custody of the Department is separated from one or more siblings in substitute care, the Department must make diligent efforts to place the siblings together in substitute care, so long as it is in the child's best interests, regardless of each child's permanency plan.

(a) The caseworker must document the efforts to place siblings together in substitute care in the Department's information system.

(b) If siblings are placed separately in substitute care, the Department must ensure that the children have the opportunity for regular, ongoing contact unless contact is not in the best interest of the child or one or more of the siblings.

(3) When the Department is considering the permanent separation of one or more siblings through adoption, the caseworker must schedule a permanency committee for a recommendation and decision pursuant to Child Welfare Policy I-E.3.6, Legal Permanency, Concurrent Planning, and Use of Permanency Committee, OAR 413-070-0500 to 413-070-0519.

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 8-2006, f. & cert. ef. 5-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 30-2010, f. & cert. ef. 12-29-10

## 413-110-0132

### Consideration of Sibling Separation

(1) When considering permanent separation of siblings in the legal custody of the Department through adoption, the permanency committee must consider the best interests of each child in the sibling group under consideration, and each of the following factors when making a recommendation:

(a) The current and lifelong needs of each child and of each sibling in the sibling group under consideration;

(b) The existence of each child's significant emotional ties to each sibling in the sibling group under consideration;

(c) The needs of each child and each sibling in the sibling group under consideration for each of the following:

(A) Physical and emotional safety;

(B) Ability to develop and maintain current and lifelong connections with the child's family;

(C) Continuity and familiarity;

(D) Appropriate educational, developmental, emotional, and physical support;

(E) Stability and permanency; and

(F) Maintaining his or her identity, cultural, religious, and spiritual heritage.

(2) After completing the review under section (1) of this rule, the permanency committee considers all of the information, deliberates, and, when committee members agree, makes a recommendation to the Child Welfare Program Manager or designee including one or more of the following options:

(a) Separation of a child from one or more siblings in the sibling group under consideration is not in the best interest of the child or the siblings, and the caseworker must continue to make efforts to place the siblings together for the purpose of adoption;

(b) Separation of a child from one or more siblings in the sibling group under consideration for the purpose of adoption is in the best interests of the child or the siblings; or

(c) When there are multiple siblings, recommendations with respect to which siblings in the sibling group under consideration should remain together for the purpose of adoption and how those matches are in the best interests of each sibling.

(3) When the permanency committee cannot reach agreement, each permanency committee member makes his or her respective recommendations known to the committee facilitator.

(4) The Child Welfare Program Manager or designee who makes the decision on behalf of the Department must consider all of the following when making the decision:

(a) The considerations in subsections (1)(a)-(c) of this rule;

(b) The information presented to the permanency committee; and

(c) The recommendations of the permanency committee.

Stat. Auth.: ORS 418.005, 418.937, 418.945, 419B.192

Stats. Implemented: ORS 418.005, 418.937, 418.945, 419B.192

Hist.: CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 30-2010, f. & cert. ef. 12-29-10

## 413-110-0150

### Sibling Placement and Permanency Planning

(1) When separation of siblings has occurred as a result of a Department action or decision pursuant to OAR 413-110-0140(1)(b) or 413-110-0140(5), the Department's efforts to identify a potential guardian or identify and recruit a potential adoptive resource must include recruitment efforts to identify a potential guardian or adoptive resource who can initiate and maintain connections between the child and one or more

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siblings, unless such a connection is not in the best interests of the child or one or more siblings.

(2) When one or more of the following circumstances exists, and it is in the best interest of the child, the caseworker must make efforts to identify a potential guardian or identify and recruit an adoptive resource that also may be able to become the guardian of or adoptive resource for the child's siblings:

(a) The child's mother is pregnant.

(b) The child's siblings, who are also in substitute care, do not yet have a permanency plan of adoption.

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 30-2010, f. & cert. ef. 12-29-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.  
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**Rules Amended:** 413-120-0000, 413-120-0010, 413-120-0020, 413-120-0035, 413-120-0060, 413-120-0800, 413-120-0810, 413-120-0830

**Rules Repealed:** 413-120-0015, 413-120-0030, 413-120-0040, 413-120-0080, 413-120-0820

**Rules Ren. & Amend:** 413-120-0033 to 413-120-0016, 413-120-0045 to 413-120-0880, 413-120-0075 to 413-120-0835

**Subject:** OAR 413-120-0000 to 413-120-0080 are being changed to update, clarify, and comply with laws that apply to the Department's process when making an adoption placement selection decision for a child in the custody of the Department. The process is being expanded to be more inclusive to community partners and allow for different levels of decision making. These rules make permanent some temporary rule changes made on July 1, 2010. OAR 413-120-0000 is being amended to set out the purpose for the revised rules. OAR 413-120-0010 is being amended to add, remove, and revise certain terms consistent with the changes in the revised rules. OAR 413-120-0015 is being repealed to remove language regarding values as these are no longer included in the Department's rules. OAR 413-120-0020 is being amended to clarify the different options available to make a decision regarding adoption placement selection and the circumstances in which the options may be used. OAR 413-120-0021 is being adopted to set out the selection process and requirements when the adoption selection decision is being made by the caseworker. OAR 413-120-0025 is being adopted to state the composition of an adoption committee. OAR 413-120-0030 regarding types of adoption committees is being repealed due to changes in the process described in other rules. OAR 413-120-0033 regarding confidentiality is being renumbered to 413-120-0016 and amended set out more specific policies about the confidentiality of information shared during the adoption selection process. OAR 413-120-0035 is being amended to further clarify the requirements of the Department regarding invitation, attendance, and notification of an adoption committee. OAR 413-120-0040 is being repealed because the requirements about potential families has been revised and included in other rules. OAR 413-120-0045 regarding efforts to place and not delaying placement is being renumbered to 413-120-0880 and amended to clarify the requirements regarding not delaying a placement for adoption when a selected adoptive resource has been identified. OAR 413-120-0053 is being adopted to set out and clarify the structure and procedure regarding an adoption committee. OAR 413-120-0057 is being adopted to set out policies about the role of an Adoption Decision Specialist. OAR 413-120-0060 is being amended to include updates and clarifications regarding the review after an adoption selection. OAR 413-120-0075 about transition to an adoptive home is being renumbered to 413-120-0835 and as amended cross-references the rule that covers the timelines regarding transition of a child

into an adoptive home. OAR 413-120-0080 about legal consent is being repealed because this topic is covered elsewhere.

OAR 413-120-0800 to 413-120-0880 are being changed to update, clarify, and comply with laws that apply to the supervision and support of an adoptive placement and to make permanent some of the temporary rules changes made on July 1, 2010. OAR 413-120-0800 is being amended to reflect a different structure consistent with other rule sets and to more clearly indicate the purpose of the rule. OAR 413-120-0810 that defines certain terms used in these rules is being amended to change the terms defined consistent with other changes in the rules. OAR 413-120-0820 is being repealed as values are no longer set out as separate rules. OAR 413-120-0830 is being amended to restructure the information in a format consistent with other rules in this set and clarify policies about Department actions prior to placement. OAR 413-120-0840 is being adopted to describe the requirements regarding an early transition including who must approve a decision to request an early transition of a child into an adoptive home prior to requesting central office approval. OAR 413-120-0850 is being adopted to set out legal risk agreement requirements for legal risk adoptive placements. OAR 413-120-0860 is being adopted to set out requirements for placement and post placement supervision removed from other rules and clarify requirements when requesting an finalization prior to the standard time period for placement for adoption. This rule includes a requirement that adoptive families be notified by the Department of tax credits prior to finalization of the adoption. OAR 413-120-0870 is being adopted to clarify the requirements of the Department when a disruption of an adoptive placement is likely or has occurred, including information regarding who needs to be consulted and efforts needed to prevent a disruption.

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

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-120-0000

### Purpose

These rules (OAR 413-120-0000 to 413-120-0060) describe the Department's responsibilities when making an adoption placement selection for a child or sibling group who:

(1) Is in the custody of the Department; and

(2) In the case of a sibling group, the Department is planning to place together for the purposes of adoption.

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0010

### Definitions

The following definitions apply to OAR 413-120-0000 to 413-120-0060:

(1) "Adoption committee" means a group of individuals convened by Department staff to make recommendations to an adoption decision specialist (ADS) regarding adoptive resources for a child.

(2) "Adoption home study" means a written report documenting the result of an assessment conducted by the Department, a licensed adoption agency, or another public agency to evaluate the suitability of an individual or individuals to adopt and make a lifelong permanent commitment to a child or children.

(3) "Adoption placement selection" means a decision made by the Department that an individual or individuals have been identified as the adoptive resource for the child.

(4) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request or, if a review was requested, the selection was sustained by that review and the review is complete.

(5) "ADS" means an Adoption Decision Specialist, who is a Department employee appointed by the Adoption Program Manager to

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attend an adoption committee and make an adoption placement selection for a child.

(6) "Child" means a person under 18 years of age.

(7) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency committee or adoption committee meeting.

(8) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of adoption;

(b) Has cared for the child or at least one sibling in a sibling group under consideration for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, the siblings in a sibling group under consideration for adoption in the same adoptive family.

(9) "Department" means the Department of Human Services, Child Welfare.

(10) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(11) "General applicant" means an individual who:

(a) Is neither a relative or current caretaker; and

(b) Has submitted a completed application to adopt a child.

(12) "Indian child" means any unmarried person who is under age 18 and is either --

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(13) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(14) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(15) "Refugee child" means, as defined under ORS 418.925, a person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(16) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult; or an individual who self-identifies, related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for Guardianship Assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may only be considered a relative for the purpose of eligibility for Guardianship Assistance and only when the requirements of all of the following subparagraphs are met:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) The Department has approved the foster parent for consideration as a guardian.

(17) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(18) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

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

Stat. Auth.: ORS 418.005, 418.280, 418.285, 418.937, 419B.100, 419B.192

Stats. Implemented: ORS 418.005, 418.280, 418.285, 418.937, 419B.100, 419B.192

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

### 413-120-0016 Confidentiality

(1) To be considered as a potential adoptive resource, each applicant who is the subject of an adoption home study must provide a signed, valid release of information to release the adoption home study to be considered in the adoption placement selection.

(2) When the Department considers information in addition to the adoption home study concerning a potential adoptive resource during the adoption placement selection, the adoption worker must:



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(a) Notify the potential adoptive resource of the additional written information; and

(b) Have the potential adoptive resource sign a release of information for the additional written information to be considered in the adoption placement selection.

(3) The Adoption Program Manager, at his or her discretion, may determine that any written information released under section (1) or (2) of this rule must be a summary or redacted copy when:

(a) An individual who is a subject of the adoption home study or additional information has requested that information be redacted or summarized; or

(b) There is a conflict of interest as described in Child Welfare Policy I-G.1.3, "Adoption Application, Home Study and Standards for Adoption", OAR 413-120-0222.

(4) Any written information released under section (1), (2) or (3) of this rule must:

(a) Be kept confidential by the recipients;

(b) Be used only for the purpose of making the recommendation and selection of a child's adoptive resource;

(c) Not be redisclosed verbally or in writing;

(d) Not be copied; and

(e) Be returned to the Department when the adoption placement selection has been made.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 409.225, 418.005, 418.280, 418.285, 418.305, 419A.255  
Hist.: SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; Renumbered from 413-120-0033, CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0020

### Adoption Placement Selection Options

When a child has a permanency plan of adoption, the Department uses one of three options to make an adoption placement selection:

(1) Selection by Caseworker. After considering the input from the child's team and following consultation with the supervisor, the caseworker may make the adoption placement selection for a child or sibling group under consideration as part of case-planning using the process in OAR 413-120-0021 when the requirements of at least one of the following subsections is met:

(a) The child is identified as an Indian child and the adoption placement selection complies with Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-070-0100 to 413-070-0260.

(b) The child is identified as a refugee child and the adoption placement selection complies with Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(c) A relative of a child is being considered alone as the potential adoptive resource for a child or sibling group under consideration, unless subsections (3)(c), (3)(d), or (3)(e) of this rule apply.

(d) The Department has conducted a diligent search and is not assessing, identifying, or considering any relative as a potential adoptive resource and, unless subsections (3)(c), (3)(d), or (3)(e) of this rule apply, the requirements of one of the following paragraphs is met:

(A) A current caretaker is being considered alone for a child or sibling group under consideration.

(B) The child is under six years of age with no extraordinary needs and each potential adoptive resource is a general applicant, unless subsection (2)(d) of this rule applies.

(2) Local Adoption Committee and ADS. The local adoption committee recommends an adoptive resource, and the ADS makes the adoption placement selection when section (3) of this rule does not apply and at least one of the following subsections applies:

(a) The child is six years of age or older.

(b) The child has extraordinary needs.

(c) A sibling group is being placed together for the purpose of adoption and each potential adoptive resource is a general applicant.

(d) The identified potential adoptive resources include the child's current foster parent being considered as a general applicant with other general applicants.

(3) Central Office Adoption Committee and ADS. The central office adoption committee recommends an adoptive resource, and the ADS makes the adoption placement selection when one of the following subsections applies:

(a) The potential adoptive resources include:

(A) More than one relative;

(B) A current caretaker and a relative;

(C) A current caretaker and a general applicant; or

(D) A relative and a general applicant.

(b) The potential adoptive resources include more than one current caretaker being considered for siblings who will be placed together in adoption.

(c) A DHS staff member is a potential adoptive resource, and the requirements of the DHS-060-002, "Conflict of Interest Policy" and the "Conflict of Interest Policy Addendum for CAF Employees" apply.

(d) A non-DHS staff member with a potential conflict of interest with the Department is a potential adoptive resource.

(e) The potential adoptive resource is an individual living outside the USA, or Child Welfare Policy I-G.1.14, "Intercountry Adoption Pursuant to the Hague Convention and Intercountry Adoption Act", OAR 413-120-0900 to 413-120-0970 applies.

(4) The caseworker, following consultation with the supervisor, may request that the adoption placement selection be made by an ADS following an adoption committee recommendation based on the complexities or dynamics of a case. The request must be approved by:

(a) The Child Welfare Program Manager or designee for the use of a local adoption committee rather than a caseworker selection; and

(b) The Adoption Program Manager, Assistant Adoption Program Manager, or designee for the use of a central office adoption committee rather than a local adoption committee.

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

Stat. Auth.: ORS 418.005, 418.280, 418.285, 419B.192

Stats. Implemented: ORS 418.005, 418.280, 418.285, 419B.192

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SCF 9-1997(Temp), f. & cert. ef. 8-15-97; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2007(Temp), f. & cert. ef. 2-26-07 thru 8-24-07; CWP 13-2007, f. & cert. ef. 8-1-07; Administrative correction 9-16-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0021

### Adoption Placement Selection by Caseworker

(1) Before making an adoption placement selection, the child's caseworker must comply with the provisions of Child Welfare Policy I-G.1.2, "Identification and Consideration of Potential Adoptive Resources", OAR 413-120-0700 to 413-120-0760.

(2) When the caseworker, after considering the input from the child's team and following consultation with the supervisor, has identified up to three potential adoptive resources to be considered for adoption placement selection, the caseworker must consult with the adoption worker for each of the identified families to:

(a) Provide the adoption worker with written information, redacted to remove identifying information, about the history and needs of each child under consideration; and

(b) Discuss the ability of the potential adoptive resource to meet the needs of each child under consideration.

(3) The adoption workers must complete all of the following:

(a) Provide the identified potential adoptive resources with the information described in subsection (2)(a) of this rule.

(b) Describe the adoption placement selection process to the potential adoptive resources to:

(A) Inform them of the individuals who will be reviewing their adoption home study or other information during the adoption placement selection process; and

(B) Assure all appropriate releases of information described in OAR 413-120-0016(1) and (2) have been obtained.

(c) Confirm with the caseworker for each child who is under consideration that the potential adoptive resource is willing and available to be considered.

(4) When the caseworker has confirmed that the identified potential adoptive resources are available and appropriate to be considered, the caseworker must set a date for the adoption placement selection and notify the adoption worker for each of the identified potential adoptive resources.

(5) At least ten business days before the adoption placement selection, the caseworker must complete all of the following:

(a) Notify the following individuals of the up to three potential adoptive resources to be considered and the date the adoption placement selection will occur:

(A) The CASA;

(B) The child's attorney;

(C) A tribal representative if the child is an Indian child; and

(D) A member of the RCWAC, if the child is a refugee child.

(b) Ensure that the individuals identified in subsection (a) of this section are sent copies of the adoption home study and any additional written information released under OAR 413-120-0016 for each potential adoptive resource, unless the individual has notified the caseworker that they do not want a copy of the materials.

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(c) Notify the individuals identified in subsection (a) of this section that any input regarding the ability of a potential adoptive resource to meet the current and lifelong needs of the child or sibling group must be received at least two days before the date of the adoption placement selection to assure it will be considered.

(6) When the caseworker has provided the notifications in section (5) of this rule and a child's relative now expresses interest in being considered as a potential adoptive resource, the Child Welfare Program Manager or designee must:

(a) Review the diligent efforts to identify a child's relatives required under Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0063;

(b) Consider the impact of a delay in achieving permanency on the best interests of the child; and

(c) Make a determination whether it is in the child's best interest for the relative to be considered despite the delay in achieving permanency.

(7) When a Child Welfare Program Manager informs the caseworker of the determination to consider a relative identified under section (6) of this rule, the caseworker must notify each individual in subsection (5)(a) of this rule and the adoption worker for each identified potential adoptive resource that the adoption selection process has been suspended.

(8) When the adoption selection process has been suspended, the adoption workers must notify each identified potential adoptive resource that the adoption selection process has been suspended.

(9) The timelines in this rule may be changed when the caseworker, the adoption worker for each of the identified potential adoptive resources, and each individual in section (5) of this rule agree on a new timeline.

(10) After considering the input from individuals in section (5) of this rule, the caseworker — following consultation with his or her supervisor — makes the adoption placement selection for a child or sibling group under consideration when OAR 413-120-0020(1) applies.

(11) On the day that the selection is made, the child's caseworker must notify the adoption workers for each of the identified potential adoptive resources who were considered for the adoption placement selection.

(12) By the end of the next business day following the adoption placement selection, the child's caseworker must send written notification of the adoption placement selection to each of the following individuals:

(a) The CASA;

(b) The child's attorney;

(c) A tribal representative if the child or young adult is an Indian child; and

(d) A member of the RCWAC, if the child is a refugee child.

(13) By the end of the next business day following the adoption placement selection, written notification on a form approved by the Department must be sent to each identified potential adoptive resource of whether or not they were selected as the adoptive resource by the following individuals:

(a) A Department adoption worker; or

(b) The child's caseworker when the adoption worker is a private agency employee.

(14) Notifications in sections (12) and (13) of this rule must contain information on the Department's review process as described in OAR 413-120-0060, unless the identified potential adoptive resources were all general applicants.

(15) Within three days of the adoption placement selection, the caseworker must assure that:

(a) The adoption placement selection and the basis for that selection are documented on a Department-approved form; and

(b) The central office Adoption Program is notified of the adoption placement selection.

(16) Any individual who received a copy of an adoption home study or other written documents during the adoption selection process must return the materials to the Department within seven business days of the notice of the adoption placement selection.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285, 419B.192

Hist.: CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0025

### Composition of an Adoption Committee

(1) An adoption committee must be composed of the following individuals:

(a) The caseworker of each child for whom adoption placement selection is being made;

(b) Three individuals appointed by the Child Welfare Program Manager or designee for a local adoption committee, and by the Adoption

Program Manager, assistant Adoption Program Manager, or designee for a central office adoption committee:

(A) The committee facilitator, who must be a Department staff person; and

(B) Two other individuals, who may be a community partner or a Department staff person.

(2) The following individuals for each child for whom adoption placement selection is being made must be notified of the adoption committee and may be adoption committee members, if they so choose, under OAR 413-120-0053(1):

(a) The CASA;

(b) The child's attorney;

(c) A tribal representative if the child is an Indian child; and

(d) A member of the RCWAC, if the child is a refugee child.

(3) The adoption worker for each identified potential adoptive resource must attend the full adoption committee.

(4) With the approval of the committee facilitator, the following individuals may attend the adoption committee:

(a) The supervisor for an individual identified in section (1), (2), or (3) of this rule; and

(b) Department staff, for training or observation purposes.

(5) When the caseworker for a child or the adoption worker for a potential adoptive resource is unavailable, the responsible agency may substitute another worker or supervisor, who is familiar with the case, to attend the adoption committee on their behalf.

(6) Committee members appointed under subsection (1)(b) of this rule must meet the following requirements:

(a) Be knowledgeable of adoption and permanency issues;

(b) Be knowledgeable of the importance of lifelong family and cultural connections; and

(c) Have no personal or current professional relationship to any of the children for whom adoption placement selection is being made or to the potential adoptive resources being considered.

(7) The committee facilitator appointed under paragraph (1)(b)(A) of this rule must comply with all of the following subsections:

(a) Hold the meeting in accordance with the requirements of Chapter 413 of the Oregon Administrative Rules;

(b) Inform each individual who is present of the responsibilities of the committee;

(c) Have each individual who is present sign a confidentiality agreement for the proceedings of the adoption committee meeting;

(d) Ensure the individuals who are invited to attend and present information to the committee as described in OAR 413-120-0035(5) are:

(A) Allowed to present information appropriate for consideration for each child for whom adoption placement selection is being made; and

(B) Excused in a timely manner.

(e) Give the committee recommendations to the ADS at the end of the adoption committee meeting.

(8) The ADS:

(a) Is appointed by the Adoption Program Manager and must:

(A) Have significant expertise in the areas of adoption and permanency issues;

(B) Have experience with adoption placement planning;

(C) Be knowledgeable of the importance of lifelong family and cultural connections; and

(D) Have no personal or current professional relationship to the child, sibling group under consideration, or the potential adoptive resources being considered.

(b) Must attend the adoption committee and may ask clarifying questions, but does not participate in the deliberations or recommendations of the adoption committee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285, 419B.192

Hist.: CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0035

### Invitation to and Notification of Adoption Committee

(1) In preparation for and prior to scheduling an adoption committee, the caseworker for each child and the adoption worker for each potential adoptive resource must comply with the provisions of Child Welfare Policy I-G.1.2, "Identification and Consideration of Potential Adoptive Resources", OAR 413-120-0700 to 413-120-0760.

(2) No later than ten business days before the scheduled adoption committee, the Department must send the ADS and each individual identified in OAR 413-120-0025(1), (2), and (3) all of the following:

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(a) Notification of the date, time, and location of the adoption committee.

(b) A copy of each of the up to three adoption home studies and the written information released under OAR 413-120-0016(1) and (2).

(c) Written information about the needs of each child under consideration.

(d) A notice that confidential information may not be re-released, under OAR 413-120-0016(4).

(e) A request to thoroughly review all of the information provided before the date of the adoption committee when the individual will be serving as a committee member.

(3) Information in subsections (2)(b), (2)(c), (2)(d) and (2)(e) of this rule need not be provided again to the caseworker for each child under consideration and the adoption worker for each potential adoptive resource.

(4) Individuals identified in OAR 413-120-0025(1), (2), and (3) may request that the Department invite individuals to the adoption committee to present information regarding a child's needs.

(5) The Department has the discretion to invite the following individuals to attend and present information regarding the child's current and lifelong needs to an adoption committee:

(a) The child, on a case by case basis, when the child's caseworker determines the child's attendance is appropriate;

(b) The child's current or previous substitute caregiver, unless the individual is being considered as a potential adoptive resource for the child; and

(c) Any other individual who has significant information about the current and lifelong needs of the child relevant to the selection of an adoptive resource.

(6) Any individual invited to provide information related to the child's needs may present information to the adoption committee in person, by telephone, through electronic communication, or in writing.

(7) A potential adoptive resource may provide supplemental information regarding his or her ability to meet the current and lifelong needs of the child or sibling group under consideration through the adoption worker. An identified potential adoptive resource and his or her legal or personal advocate may not attend an adoption committee.

(8) When the notification in section (2) of this rule has been provided and a child's relative now expresses interest in being considered as a potential adoptive resource, the Child Welfare Program Manager or designee must:

(a) Review the diligent efforts to identify a child's relatives under Child Welfare Policy I-E.1.1., "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0063;

(b) Consider the impact of a delay in achieving permanency on the best interests of the child; and

(c) Make a determination whether it is in the child's best interest for the relative to be considered despite the delay in achieving permanency.

(9) When a Child Welfare Program Manager informs the caseworker of the determination to consider a relative identified under section (8) of this rule, the caseworker must notify each individual identified in OAR 413-120-0025(1), (2), and (3) that the adoption selection process has been suspended.

(10) When the adoption selection process has been suspended, the adoption workers must notify each identified potential adoptive resource that the adoption selection process has been suspended.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0053

### The Adoption Committee

(1) An individual described in OAR 413-120-0025(2) attending an adoption committee must inform the committee facilitator at the beginning of the adoption committee whether the individual intends to serve as an adoption committee member. These individuals may present written or oral information regarding the needs of the child during the adoption committee, whether or not they are serving as adoption committee members.

(2) An individual invited to attend the adoption committee under OAR 413-120-0035(5) to present information about the child must:

(a) Present written or oral information regarding the needs of the child during the adoption committee; and

(b) Respond to clarifying questions from adoption committee members and the ADS; and

(c) Leave when excused from the adoption committee, prior to the presentation of the potential adoptive resources.

(3) The adoption workers must present information on the knowledge, skills, and abilities of the potential adoptive resource in relation to meeting the current and lifelong needs of the child.

(4) After all presentations have been completed:

(a) The following individuals must remain at the adoption committee:

(A) The adoption committee members;

(B) Each adoption worker presenting information regarding a potential adoptive resource; and

(C) The ADS.

(b) The following individuals may remain at the adoption committee, if they so choose:

(A) Department staff or supervisors as described in OAR 413-120-0025(4).

(B) Individuals described in OAR 413-120-0025(2) attending an adoption committee who have elected not to serve as committee members.

(5) The adoption committee members must:

(a) Consider all of the information, deliberate, and make recommendations regarding the adoptive resource most likely to permanently and fully integrate the child into the family and meet the current and lifelong needs of each child for whom potential adoptive resources are being considered.

(A) When adoption committee members all agree, the adoption committee may make one or more of the following recommendations:

(i) A single potential adoptive resource is the most appropriate.

(ii) An order of preference of appropriate adoptive resources.

(iii) A potential adoptive resource is not appropriate and should not be considered.

(B) When the adoption committee cannot reach agreement, each adoption committee member makes his or her respective recommendations known to the committee facilitator.

(b) At the conclusion of the adoption committee, the committee facilitator must record the recommendations on a form approved by the Department and submit the form to the ADS.

(6) All confidential written information provided for the purpose of adoption placement selection to individuals who are not Department staff must be:

(a) Retained by the Department at the conclusion of the adoption committee when the individual attended the committee; and

(b) Returned to the Department within seven business days when the individual did not attend the committee.

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0057

### The Adoption Selection and Notification

(1) Adoption Placement Selection.

(a) The ADS must make a decision regarding the adoption placement selection no later than the end of the next business day following the scheduled adoption committee.

(b) The ADS may make one of the following adoption placement selection decisions from the identified potential adoptive resources presented at the adoption committee:

(A) Select one adoptive resource.

(B) Select an adoptive resource and identify a second adoptive resource as an alternate in the event that the selected adoptive resource is subsequently found to be unavailable or no longer deemed by the Department to meet the current and lifelong needs of the child under Child Welfare Policy I-G.1.10, "Supervision and Support of an Adoptive Placement", OAR 413-120-0800 to 413-120-0880.

(C) Select none of the potential adoptive resources.

(2) Notification of the Adoption Placement Selection.

(a) The ADS must send written notification to the child's caseworker, the adoption workers, and the committee facilitator of the adoption placement selection, and alternate if one was named, no later than the end of the next business day following the scheduled adoption committee.

(b) By the end of the next business day following the notice sent in subsection (a) of this section, written notification on a form approved by the Department must be sent as follows:

(A) Each potential adoptive resource who was presented at the adoption committee must be notified by the following individuals of whether or not they were selected:

(i) A Department adoption worker; or



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(ii) The child's caseworker when the adoption worker is a private agency employee.

(B) The child's attorney, CASA, tribal representative, a member of the RCWAC, and the private adoption agency representing a potential adoptive resource, as applicable, must be notified of the adoption placement selection by the child's caseworker.

(C) Notices in paragraphs (A) and (B) of this subsection must contain information on the Department's review process as described in OAR 413-120-0060, except when the potential adoptive resources were all general applicants.

(3) The ADS must send written documentation on a form approved by the Department regarding the adoption placement selection, the alternate when one is named, and the basis for those decisions to the central office Adoption Program within two business days following the adoption committee.

Stat. Auth.: ORS 418.005, 418.280, 418.285  
Stats. Implemented: ORS 418.005, 418.280, 418.285  
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0060

### Review of the Adoption Selection

(1) A review may not be requested of an adoption placement selection when each potential adoptive resource was a general applicant.

(2) Except as provided in section (1) of this rule:

(a) Each of the following individuals may request a review of the process and the adoption placement selection under OAR 413-120-0021(10) or 413-120-0057(1):

- (A) The child.
- (B) The child's attorney.
- (C) The CASA.
- (D) A tribal representative.
- (E) A member of the RCWAC.

(F) The child's caseworker, with the approval of the caseworker's supervisor and the Child Welfare Program Manager or designee.

(G) A relative or current caretaker who was considered as the adoptive resource but was not selected.

(b) A request for review of the process and decision made in the adoption placement selection must be in writing and received by the Adoption Program Manager or designee within seven calendar days of the notification of the adoption placement selection under OAR 413-120-0021(12)-(13) or 413-120-0057(2)(b).

(c) When a request for review has been received, the Adoption Program Manager or designee must send written notice of the request to the following individuals:

- (A) Each of the potential adoptive resources considered by the caseworker or adoption committee and ADS;
- (B) The child's caseworker;
- (C) The adoption worker for each of the potential adoptive resources considered;
- (D) The supervisors of the workers;
- (E) The child's attorney;
- (F) The child's CASA;
- (G) The tribe, if the child is an Indian child;
- (H) A member of the RCWAC, if the child is a refugee child; and
- (I) The local Child Welfare Program Manager.

(d) The DHS Assistant Director for CAF or designee must decide whether to grant a review of the adoption placement selection within 14 calendar days after the notice of the adoption placement selection under OAR 413-120-0021(12)-(13) or 413-120-0057(2)(b). Written notice of the decision whether or not to conduct a review must be sent to the individuals listed in subsection (c) of this section and to the Adoption Program Manager. This written notice is not required to be provided within the 14 calendar day timeline for the decision whether to grant a review.

(e) The DHS Assistant Director for CAF or designee may, on his or her initiative and without a request for a review, give notice of intent to review the adoption placement selection when the decision to review is made within seven calendar days following the date of the notice of the adoption placement selection in OAR 413-120-0021(12)-(13) or OAR 413-120-0057(2)(b).

(f) The DHS Assistant Director for CAF or designee may conduct the review by any of the following methods:

(A) Personally conduct a review of information considered in making the adoption placement selection and may consider additional, relevant information about the child or potential adoptive resource.

(B) Refer the adoption placement selection to a review committee appointed by and at the discretion of the DHS Assistant Director for CAF or designee to --

(i) Review the information considered in making the original adoption placement selection;

(ii) Consider additional relevant information about the child or potential adoptive resources; and

(iii) Issue a recommendation that the DHS Assistant Director for CAF or designee affirm or modify the original adoption placement selection of the caseworker or the ADS or recommend a different adoption placement selection.

(C) Appoint another individual to --

(i) Review the information considered in making the original adoption placement selection;

(ii) Consider additional relevant information about the child or potential adoptive resources; and

(iii) Issue a recommendation that the DHS Assistant Director for CAF or designee affirm or modify the original adoption placement selection of the caseworker or the ADS, or recommend a different adoption placement selection.

(g) The DHS Assistant Director for CAF or designee must provide written notification of the decision affirming or changing the original adoption placement selection to the individuals identified in subsection (2)(c) of this rule and the Adoption Program Manager.

(3) Notwithstanding sections (1) and (2) of this rule, the DHS Assistant Director for CAF may reconsider a decision and require the actions in subsection (2)(f) of this rule to occur when the following conditions exist:

(a) The time to request review of an adoption placement selection under subsection (2)(b) of this rule has expired;

(b) There is no request for review pending; and

(c) The deadline set by statute for a person entitled to seek judicial review of an adoption placement selection entered under this rule has not expired.

(4) The adoption placement selection made by the DHS Assistant Director for CAF or designee under this rule is final.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.280, 418.285  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SCF 9-1997(Temp), f. & cert. ef. 8-15-97; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 23-2007(Temp), f. & cert. ef. 12-12-07 thru 6-9-08; CWP 4-2008, f. 5-30-08, cert. ef. 6-1-08; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0800

### Purpose

These rules (OAR 413-120-0800 to 413-120-0880) describe.

(1) Department responsibilities following the selection of an adoptive resource pursuant to Child Welfare Policy I-G.1.5, "Adoption Placement Selection", OAR 413-120-0000 to 413-120-0060 for:

(a) Adoption transition and placement of the child with the adoptive resource;

(b) Supervision of the adoptive placement;

(c) Support for the child and adoptive family after placement; and

(d) Actions required by the Department when a disruption of an adoptive placement of a child in the legal custody of the Department is likely or has occurred.

(2) The actions required by the Department when concerns arise regarding the appropriateness of an adoptive resource for a child or children in the legal custody of another public child welfare agency that the Department is supervising.

(3) The additional requirements for an international adoption of a child in the legal custody of the Department are referenced in Child Welfare Policy I-G.1.14, "Intercountry Adoption Pursuant to the Hague Convention and Intercountry Adoption Act", OAR 413-120-0900 to 413-120-0970.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0810

### Definitions

The following definitions apply to OAR 413-120-0800 to 413-120-0880:

(1) "Adoption home study" means a written report documenting the result of an assessment conducted by the Department, a licensed adoption

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agency, or another public agency to evaluate the suitability of an individual or individuals to adopt and make a lifelong permanent commitment to a child or children.

(2) "Adoption placement selection" means a decision made by the Department that an individual or individuals have been identified as the adoptive resource for the child.

(3) "Adoption transition" means activities related to the placement of a child or sibling group under consideration in the home of the family selected as the adoptive resource.

(4) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request or, if a review was requested, the selection was sustained by that review and the review is complete.

(5) "Child" means a person under 18 years of age.

(6) "Department" means the Department of Human Services, Child Welfare.

(7) "Disruption" means the interruption of an adoptive placement prior to the finalization of the adoption in a court of law.

(8) "Legal risk adoptive placement" means a placement with a substitute caregiver designated by the Adoption Program as the child's adoptive resource after the Department has made a formal decision:

(a) To legally free the child for adoption; and

(b) To finalize the adoption with the adoptive resource when the child becomes legally free.

(9) "Post-placement supervision" means the supervision of a child following placement with an adoptive resource.

(10) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 24-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 32-2003, f. & cert. ef. 10-1-03; CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0830

### Department Actions Prior to Placement

(1) Prior to the physical placement of a child in the home of the family selected to be the adoptive resource, the caseworker must arrange post-placement supervision and medical coverage for the child.

(2) When the family selected to be the adoptive resource is outside the state of Oregon, but in the United States:

(a) The court and the receiving state must agree to the adoptive placement prior to the physical placement of a child who is not yet legally free for adoption;

(b) Approval as required by Child Welfare Policy I-B.3.4.2, "Interstate Compact on the Placement of Children", OAR 413-040-0200 to 413-040-0330 must be received; and

(c) When supervision is to be provided by a private agency, the Department must contract only with an agency willing to:

(A) Provide supportive services to the child and adoptive family;

(B) Provide progress reports as required by the Department;

(C) Provide a written recommendation regarding the finalization of the adoption; and

(D) Accept payment as authorized by the Department.

(3) Unless an exception is approved as described in OAR 413-120-0840, adoption transition of a child into the home of a family selected to be the adoptive resource may not begin until:

(a) The time period has expired for the written request for review of the adoption placement selection as described in Child Welfare Policy I-G.1.5, "Adoption Placement Selection", OAR 413-120-0060; or

(b) In the event the DHS Assistant Director of CAF or designee gives notice of the intent to review, until that review is complete.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 24-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 32-2003, f. & cert. ef. 10-1-03; CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0835

### Adoption Transition

The topic of adoption transition is covered in OAR 413-120-0830.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2007(Temp), f. & cert. ef. 2-26-07 thru 8-24-07; CWP 13-2007, f. & cert.

ef. 8-1-07; Administrative correction 9-16-07; Renumbered from 413-120-0075, CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0840

### Early Adoption Transition

(1) The child's caseworker, following consultation with the caseworker's supervisor and the approval of the Child Welfare Program Manager, may request physical placement with the family selected to be the adoptive resource before the timelines described in OAR 413-120-0830 when the requirements in all of the following subsections are met:

(a) It is in the best interests of the child;

(b) There are no indications that a review of the adoption placement selection will be requested; and

(c) When the child is to be placed in a state within the United States and outside of Oregon, the requirements under OAR 413-120-0830 have been met regarding a placement in a state other than Oregon.

(2) The caseworker must send the written request for early adoption transition, including the basis for the request, to the Adoption Program Manager or designee who makes the final decision.

(3) The caseworker must document the decision regarding the early adoption transition in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0850

### Legal Risk Adoptive Placement

When the Department determines a placement is a legal risk adoptive placement, the Department and the adoptive resource must sign a Legal Risk Agreement which indicates all of the following:

(1) The Department cannot guarantee the child will become legally freed for adoption.

(2) The Department is actively pursuing a plan to legally free the child for adoption.

(3) The adoptive resource agrees to provide substitute care to the child with the understanding that the child may be removed from the home if the child does not become legally free for adoption.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0860

### Placement and Post-placement Supervision

(1) The child's caseworker must offer support and services to the adoptive resource to assist in a successful adoption transition of the child into the home of a family selected to be the adoptive resource.

(2) Post-placement supervision must include all of the following:

(a) Face-to-face contact with the child under Child Welfare Policy I-B.1, "Monitoring Child Safety", OAR 413-080-0059;

(b) Assessment of the child's safety and well-being under Child Welfare Policy I-B.1, Monitoring Child Safety, OAR 413-080-0067;

(c) Providing services and support to assist the adoptive resource in meeting the requirements described in Child Welfare Policy I-G.1.3, "Adoption Applications, Adoption Home Studies, and Standards for Adoption", OAR 413-120-0246(1)(b).

(d) Providing support to the adoptive resource in the process of the completion and submission of the adoption assistance application, when applicable; and

(e) Documentation from the supervising worker which includes the supervision reports and a recommendation regarding finalization of the adoption.

(3) When the child is placed through an in-state private agency, the Department must provide supervision of the placement and, when applicable, must coordinate support services with the in-state private agency.

(4) When it becomes known to the Department that there are significant changes to the adoptive resource's situation, including changes in the family structure, the Department may require an updated adoption home study prior to making a determination to proceed with finalization of the adoption.

(5) Prior to finalization of the adoption, the Department must ensure that the adoptive resource is made aware of all of the following:

(a) Available post-legal services;

(b) The potential eligibility for federal or state adoption tax credits, or both; and

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(c) The ability to seek voluntary supportive services through the Department to stabilize an adoption and promote lifelong permanency for children.

(6) The standard supervision period for an adoptive placement is a minimum of six consecutive months and can include the time the adoptive resource was the child's substitute caregiver. When the child's caseworker and the adoption worker agree that it is in the child's best interests to proceed with finalization before the standard six month period:

(a) The child's caseworker or adoption worker must request approval from:

- (A) Their supervisor; and
- (B) The Adoption Program Manager or designee.

(b) The child's caseworker must document in the Department's information system when approval is given for a reduced post-placement supervision time.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0870

### Disruption

(1) After the adoption placement selection has been made under Child Welfare Policy I-G.1.5, "Adoption Placement Selection", OAR 413-120-0021 or 413-120-0057 but prior to the physical placement of the child with the family selected as the adoptive resource, when circumstances occur or conditions are made known to the Department that give the child's caseworker reason to believe the selected adoptive resource is no longer appropriate for the child or his or her siblings, the child's caseworker must:

- (a) Consult with his or her supervisor;
- (b) Document the conditions or circumstances of concern; and
- (c) Request approval from the Adoption Program Manager to reconsider the adoption placement selection.

(2) When the caseworker for the child determines that a disruption is likely, the caseworker must consult with each of the following to try to preserve the placement, when it is in the best interest of the child to do so:

- (a) His or her supervisor;
- (b) The adoption worker who is supervising the adoptive placement;
- (c) Members of the child's team identified as individuals who can offer additional information or support, and
- (d) The family, if possible.

(3) When the Department is supervising an adoptive placement of a child in the custody of another public child welfare agency and concerns arise that indicate that the adoptive resource is no longer appropriate for the child or children, the caseworker must ensure contact is made with the responsible entity and coordinate subsequent actions.

(4) When the caseworker and supervisor recommend to the Child Welfare Program Manager that the adoptive resource for a child in the custody of the Department is no longer appropriate for the child or children, the Child Welfare Program Manager, when in agreement, forwards the request for final approval for a disruption to the Adoption Program Manager.

(5) The caseworker must document the disruption in the Department's information system and notify the central office Adoption Program and the central office ICPC unit, if applicable, of the date of the adoption disruption.

(6) After the disruption of an adoptive placement of a child in the custody of the Department, the child's caseworker must consult with his or her supervisor, the child's team, and individuals with significant adoption experience to staff the case in order to:

- (a) Gain a comprehensive understanding of the issues leading to the disruption; and
- (b) Increase the likelihood for the child's success in another adoptive placement.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

## 413-120-0880

### No Delay in Placement

(1) The Department may not delay placement of a child for adoption with an adoptive resource based on any criteria listed in the following subsections:

- (a) Geographic location; or
- (b) Race, color, or national origin of the child or the adoptive resource.

(2) An adoptive resource who believes that the Department violated the prohibition under section (1) of this rule may file a civil rights complaint and request a review under Child Welfare Policy I-A.1, "Client Rights".

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; Renumbered from 413-120-0045, CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 32-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 12-29-10

**Notice Publication Date:** 11-1-2010

**Rules Repealed:** 413-120-0250, 413-120-0255, 413-120-0260, 413-120-0265, 413-120-0270, 413-120-0275, 413-120-0280, 413-120-0285, 413-120-0290, 413-120-0300, 413-120-0310, 413-130-0150, 413-130-0160, 413-130-0170, 413-130-0180

**Subject:** OAR 413-120-0250, 413-120-0255, 413-120-0260, 413-120-0265, 413-120-0270, 413-120-0275, 413-120-0280, 413-120-0285, and 413-120-0290 about Children Adults and Families Division and partner agency employee adoption home studies, which were suspended on July 1, 2010, are being repealed. OAR 413-120-0250 had covered procedures by which Department and partner agency employees could obtain adoptive home studies, OAR 413-120-0255 had covered Department values, OAR 413-120-0260 had covered definitions used in these rules (OAR 413-120-0250 to 413-120-0290), OAR 413-120-0265 had covered adoptive home studies the Department could prepare, OAR 413-120-0270 had covered adoptive home studies prepared by Oregon private licensed adoption agencies who were members of a coalition, OAR 413-120-0275 had covered children Department employees could be considered as adoptive resources for, OAR 413-120-0280 had covered the adoption placement selection process, OAR 413-120-0285 had covered the training required for adoptive resource applicants, and OAR 413-120-0290 had covered the confidentiality of adoptive home studies. The topics covered in these rules will be covered in amended form in OAR 413-120-0190 to 413-120-0246. Some items in the rules being repealed need not appear in administrative rules, or no longer accurately reflect Department terminology, policy, or practice.

OAR 413-120-0300 and 413-120-0310 about the minimum standards for adoptive homes in Oregon, which were suspended on July 1, 2010, are being repealed. The topics covered in these rules will be covered in other rules in amended form in Chapter 413. The Department is revising and consolidating administrative rules to follow the permanency and adoption plans more closely and to make it easier for individuals to understand how processes work. Some items in the rules being repealed need not appear in administrative rules, or no longer accurately reflect Department terminology, policy, or practice.

OAR 413-130-0150, 413-130-0160, 413-130-0170, and 413-130-0180 about an adoptive family's eligibility for post-adoption services when the adoptive family adopted a child through the Department, which were suspended on July 1, 2010, are being repealed. The topics covered in these rules will be covered in other rules in amended form in OAR 413-120-0800 to 413-120-0880 to clarify the services and expectations during an adoptive placement. Some items in the rules being repealed need not appear in administrative rules, or no longer accurately reflect Department terminology, policy, or practice.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 33-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 12-29-10

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 413-120-0222, 413-120-0225, 413-120-0243, 413-120-0246



# ADMINISTRATIVE RULES

**Rules Amended:** 413-120-0190, 413-120-0195, 413-120-0220, 413-120-0240

**Rules Repealed:** 413-120-0200, 413-120-0210, 413-120-0230

**Subject:** These rules are being changed to update and clarify – and comply with laws that apply – to the Department’s adoption application requirements for individuals applying to adopt a child in the legal custody of the Department, the requirements for submitting an adoption application to the Department to apply for a child in the custody of another public child welfare agency, the Department’s authority regarding adoption applications submitted to the Department, the adoption home study criteria for individuals applying to adopt a child in the legal custody of the Department, and standards for adoptive homes for children in the custody of the Department. These changes make permanent some changes adopted by the temporary rules on July 1, 2010. OAR 413-120-0190 is being amended to set out the purpose of the revised rules. OAR 413-120-0195 is being amended to add, remove, and revise definitions of certain terms used in the revised rules. OAR 413-120-0200 about adoption applications, OAR 413-120-0210 about applicants who have an adoption certification with a non-contracted adoption agency, and OAR 413-120-0230 about the application and approval process are being repealed because the topics are covered in other rules and some of these policies have changed. OAR 413-120-0220 is being amended to set out the current adoption application requirements. OAR 413-120-0222 is being adopted to set out the policy on conflict of interest for adoptive applicants. OAR 413-120-0225 is being adopted to set out the conditions that require special staffing or termination of the Department’s home study application process. OAR 413-120-0240 is being amended to clarify the circumstances under which the Department must send written notice to adoption applicants regarding the status of applications submitted to the Department. OAR 413-120-0243 is being adopted to indicate the circumstances in which an application for adoption may be prioritized. OAR 413-120-0246 is being adopted to set out the requirements for adoption home studies (including their release to others) and characteristics required for approval of adoptive homes and individuals applying to adopt a child in the custody of the Department.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-120-0190

### Purpose

These rules (OAR 413-120-0190 to 413-120-0246) describe the Department’s:

- (1) Adoption application requirements for Oregon residents.
- (a) Applying to adopt a child in the legal custody of the Department.
- (b) Submitting an application to the Department to conduct an adoption home study for a child in the custody of a public child welfare agency in another state after the agency in the other state has submitted an adoptive placement request to the Department in accordance with the ICPC.
- (c) Submitting an application to the Department to conduct an adoption home study for a child in the custody of a public child welfare agency in another country after the agency in the other country has submitted an adoption home study request to the Department and in accordance, when applicable, with Child Welfare Policy I-G.1.14, “Intercountry Adoption Pursuant to the Hague Convention and Intercountry Adoption Act”, OAR 413-120-0900 to 413-120-0970.
- (2) Authority regarding adoption applications submitted to the Department.
- (3) Adoption home study criteria for individuals applying to adopt a child in the legal custody of the Department.
- (4) Standards for an adoptive home for a child in the custody of the Department.
- (5) Authority to release an adoption home study.

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 33-2010, f. & cert. ef. 12-29-10

## 413-120-0195

### Definitions

The following definitions apply to OAR 413-120-0190 to 413-120-0246:

(1) “Adoption agency” means an organization providing the services under any one of the following subsections:

- (a) Identifying a child for adoption and arranging an adoption.
- (b) Securing the necessary consent to relinquishment of parental rights and to adoption.
- (c) Performing a background study on a child or a home study on a prospective adoptive parent and reporting on such a study.
- (d) Making determinations of the best interests of a child and the appropriateness of adoption placement for the child.
- (e) Monitoring a case after placement until final adoption.
- (f) When necessary because of disruption before final adoption, assuming custody and providing child care or other social services for the child pending an alternative placement.

(2) “Adoption home study” means a written report documenting the result of an assessment conducted by the Department, a licensed adoption agency, or by another public agency to evaluate the suitability of an individual or individuals to adopt and to make a lifelong permanent commitment to a child or children.

(3) “Adoption placement selection” means a decision made by the Department that an individual or individuals have been identified as the adoptive resource for a child.

(4) “Adoptive resource” means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(5) “Child” means a person under 18 years of age.

(6) “Current caretaker” means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of adoption;

(b) Has cared for the child or at least one sibling in a sibling group under consideration for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, the siblings in a sibling group under consideration for adoption in the same adoptive family.

(7) “Department” means the Department of Human Services, Child Welfare.

(8) “Foster parent” means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(9) “General applicant” means an individual who:

(a) Is neither a relative or current caretaker; and

(b) Has submitted a completed application to adopt a child.

(10) “ICPC” means the Interstate Compact on the Placement of Children (see ORS 417.200).

(11) “Indian child” means any unmarried person who is under age 18 and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) “Relative” means:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

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(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult; or an individual who self-identifies, related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for Guardianship Assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may only be considered a relative for the purpose of eligibility for Guardianship Assistance and only when the requirements of all of the following subparagraphs are met:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) A permanency committee has recommended the foster parent for consideration as a guardian.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 33-2010, f. & cert. ef. 12-29-10

## 413-120-0220

### Adoption Application Requirements

(1) A resident of Oregon applying to adopt a child in the legal custody of the Department must submit an application for an adoption home study to the Department or to a licensed adoption agency willing to contract with the Department or willing to allow another licensed adoption agency to contract with the Department for post placement supervision services as outlined in OAR 413-120-0830(2)(c).

(2) Applications.

(a) The Department accepts applications for an adoption home study from Oregon residents applying to adopt a child:

(A) In the custody of the Department;

(B) In the custody of a public child welfare agency in another state following receipt of an ICPC request from the agency in the other state; or

(C) In the custody of a public child welfare agency in another country following a request from the agency in the other country and in accordance, when applicable, with Child Welfare Policy I-G.1.14 "Intercountry Adoption Pursuant to the Hague Convention and Intercountry Adoption Act", OAR 413-120-0900 to 413-120-0970.

(b) The Department accepts applications for an adoption home study for Oregon residents who have previously applied or are currently applying through another adoption agency. The applicant must:

(A) Sign a release of information allowing ongoing communication with the other adoption agency; and

(B) Sign a release of information allowing the Department to obtain a copy of the adoption file of the individual.

(3) An application submitted to the Department must include all of the following:

(a) An adoption application form;

(b) A signed, valid release of information from each applicant who is a subject of the adoption home study allowing the adoption home study to be released to the individuals and for the purposes described in OAR 413-120-0246(2);

(c) An Adoptive Family Information and Placement Preference form, unless the Department determines this is not required due to the existing relationship between the child and the applicant;

(d) Financial information, current within 12 months of application, demonstrating the ability of the applicant to meet the needs of the family and the child to be adopted;

(e) Medical information current within 24 months of application;

(f) When applicable, mental health information;

(g) When applicable, copy of marriage certificate, divorce verification, or death certificate of spouse;

(h) Consent to a criminal offender information records check for each applicant and all household members age 18 and older under Child Welfare Policy I-G.1.4, "Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks through the FBI for Relative Caregivers, Foster Parents, Other Persons in the Household and Adoptive Parents for Children in the Care or Custody of DHS", OAR 413-120-0400 to 413-120-0470;

(i) Consent to a child abuse and neglect background check for each adoptive applicant and all household members age 18 and older; and

(j) Names and contact information of four references, two of whom may be relatives of the adoptive applicant, who can attest to the character and ability of the adoptive applicant to provide safe and protective care for a child.

(4) The Department may require additional information from an adoptive applicant to assess the ability of the applicant to meet the standards of an adoptive home.

(5) The adoptive applicant must be at least 21 years of age, unless one of the following subsections applies:

(a) The Child Welfare Program Manager or designee has approved a relative adoptive applicant between the ages of 18 through 20 years; or

(b) The child is an Indian child and the adoptive applicant is:

(A) A member of the child's extended family;

(B) Another member of the Indian child's tribe; or

(C) Another Indian family.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 33-2010, f. & cert. ef. 12-29-10

## 413-120-0222

### Conflict of Interest for Adoptive Applicants

(1) When an adoptive applicant under OAR 413-120-0220 is a Department of Human Services (DHS) staff member, the requirements of DHS Administrative Policy DHS-060-002, "Conflict of Interest Policy" and "Conflict of Interest Policy Addendum for CAF Employees" apply.

(2) When an adoptive applicant under OAR 413-120-0220 is not a DHS staff member and the Child Welfare Program Manager determines a potential conflict of interest with the Department exists, section (3) of this rule applies. If the Child Welfare Program Manager is unable to determine if there is a conflict of interest, the Adoption Program Manager or designee makes the determination.

(3) An adoptive applicant who has a conflict of interest with the Department is referred to one of the following entities for application and completion of the adoption home study:

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(a) A local child welfare office in another district, upon the approval of the supervisor; or

(b) A contracted adoption agency, with the approval of the Adoption Program Manager or designee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: CWP 33-2010, f. & cert. ef. 12-29-10

## 413-120-0225

### Conditions that Require Additional Approval or Termination of the Department's Adoption Application Process

(1) Prior to proceeding with an adoption application submitted by an individual who has lost permanent custody of a child, there must be an approval by the Adoption Program Manager or designee, at the request of the District Manager or designee.

(2) The Department may terminate the application process and deny an application at any time or remove a completed adoption home study from consideration, when one or more of the following subsections applies:

(a) Information regarding the adoptive applicant is sufficient to determine the adoptive applicant cannot meet adoption home standards described in OAR 413-120-0246.

(b) An adoptive applicant's license or certificate to provide services to children, the elderly, or individuals with disabilities has previously been or is currently being denied, revoked, or suspended.

(c) The adoptive applicant falsifies or omits information.

(d) The adoptive applicant does not respond to the inquiries and requests for information within the timelines established by the Department.

(e) The adoptive applicant does not submit the required application information under OAR 413-120-0220.

(f) The adoptive applicant is selected by another adoption agency to adopt a child.

(3) When the Department terminates the adoption application process, the caseworker must:

(a) Send written notification of the termination to the adoptive applicant; and

(b) Document the termination and notification in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 33-2010, f. & cert. ef. 12-29-10

## 413-120-0240

### Status Notification of Adoption Applications

The Department must send written notice of the status of the application to an individual who has submitted an adoption application to the Department when the requirements of any of the following sections apply:

(1) The adoption home study is not initiated within 180 calendar days from the date the application is received; or

(2) The Department determines that an individual will not be recommended as a potential adoptive resource.

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 33-2010, f. & cert. ef. 12-29-10

## 413-120-0243

### Prioritization of an Adoption Home Study Application

The Department has discretion to prioritize adoption home study applications received from the following individuals according to the needs of the child or children awaiting adoption rather than the date of receipt of an application:

(1) An individual applying to adopt a related child.

(2) An individual applying as a current caretaker for a child.

(3) An individual who is a general applicant when the Department has determined that further general recruitment is not required under Child Welfare Policy I-G.1.2, "Identification and Consideration of Potential Adoption Resources", OAR 413-120-0750.

(4) An individual who is a general applicant interested in adopting a child with special needs for whom there are few or no available approved homes.

(5) An individual who is a general applicant other than those described in sections (3) and (4) of this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 33-2010, f. & cert. ef. 12-29-10

## 413-120-0246

### Standards for an Adoptive Home and Release of an Adoption Home Study

(1) To be approved to adopt a child in the legal custody of the Department, an individual must complete all of the following:

(a) Have an adoption home study recommending the applicant as a potential adoptive resource written, amended, or updated within the 12 months prior to the adoption placement selection, completed by --

(A) The Department under Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents" OAR 413-200-0301 to 413-200-0396;

(B) An Oregon licensed private agency for an Oregon resident when the home study is prepared by a private agency for an Oregon resident under Child Welfare Policy II-C.1.3, "Licensing Adoption Agencies", OAR 413-215-0401 to 413-215-0481;

(C) An out-of-state agency under Child Welfare Policy I-B.3.4.2, "Interstate Compact on the Placement of Children", OAR 413-040-0200 to 413-040-0330; or

(D) An agency in another country under Child Welfare Policy I-G.1.14, "Intercountry Adoption Pursuant to the Hague Convention and Intercountry Adoption Act", OAR 413-120-0900 to 413-120-0970.

(b) Meet the Department's standards for adoptive homes by demonstrating the knowledge, skills, and ability to meet, without agency oversight, the current and lifelong needs of the child for all of the following:

(A) Physical and emotional safety and well-being;

(B) Developing and maintaining connections to the child's family;

(C) Continuity and familiarity;

(D) Appropriate social, educational, developmental, emotional, and physical support;

(E) Integration into the family;

(F) Stability and permanency; and

(G) Maintaining his or her identity, cultural, religious, and spiritual heritage.

(c) Provide evidence of successful completion of a training program approved by the Department, unless the Adoption Program Manager has approved an alternate training program.

(2) Release of an adoption home study. An adoption home study is considered confidential information and, when released under this rule must have a signed, valid release of information from each applicant who is a subject of the adoption home study.

(a) The Department may release a copy of the adoption home study to:

(A) An adoption applicant who is a subject of the adoption home study;

(B) Individuals involved in the adoption placement selection process, under Child Welfare Policy I-G.1.5, Adoption Placement Selection, OAR 413-120-0021 and OAR 413-120-0035;

(C) The court for the purposes of finalizing an adoption; and

(D) A public agency upon the written request of an applicant who is a subject of the adoption home study.

(b) A Child Welfare Program Manager must approve the release of an adoption home study requested for a purpose other than those listed in subsection (a) of this rule.

(c) An individual receiving a copy of an adoption home study must keep the information contained therein confidential.

(d) Before releasing an adoption home study, the Department must redact or summarize information, when necessary, to prevent the identification of individuals, other than the applicants, who provided information for the adoption home study.

(e) When an agency or entity other than the Department completes the adoption home study, the Department must receive approval from the agency or entity that completed the adoption home study before release.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 33-2010, f. & cert. ef. 12-29-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

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**Rules Adopted:** 413-120-0521, 413-120-0541, 413-120-0570, 413-120-0590, 413-120-0595

**Rules Amended:** 413-120-0500, 413-120-0510



# ADMINISTRATIVE RULES

**Rules Repealed:** 413-120-0520, 413-120-0530, 413-120-0540

**Rules Ren. & Amend:** 413-120-0550 to 413-120-0580

**Subject:** These rules about the request of a foster parent for consideration as a current caretaker are being changed to restate the purpose of these rules, more clearly define key terms used in these rules, and explain the process under which the Department considers a foster parent as a potential adoptive resource as a part of case planning for a child who has a permanency plan of adoption allowing the Department to better serve children for whom adoption is the permanency plan and foster parents wanting to be considered as potential adoptive resources for these children. These changes also make permanent some of the changes made by temporary rule on July 1, 2010. OAR 413-120-0500 is being amended to state the purpose of these rules about Department's process by which a foster parent may be recommended as a current caretaker for the purpose of consideration as a potential adoptive resource as a part of case planning for a child who has a permanency plan or concurrent permanent plan of adoption. OAR 413-120-0510 is being amended to add definitions such as adoptive resource, CASA (court appointed special advocate), child, committee facilitator, Department, foster parent, general applicant, Indian child, RCWAC (the Refugee Child Welfare Advisory Committee), refugee child, relative, sibling, and substitute care; and restate the definitions for current caretaker and permanency committee. OAR 413-120-0520 about values, 413-120-0530 about completion of diligent search, and 413-120-0540 about the current caretaker committee are being repealed to remove language not required to be in administrative rules. OAR 413-120-0521 is being adopted to state that the Department considers substitute care as a temporary resource for a child. OAR 413-120-0541 is being adopted to state the circumstances under which a foster parent may request consideration as a current caretaker for a child in the legal custody of the Department. OAR 413-120-0550 is being renumbered to OAR 413-120-0580 and amended to indicate what is included in the notification and decision regarding a foster parent's request for consideration as a current caretaker and the timeline to complete an adoption home study when the foster parent will be considered. OAR 413-120-0570 is being adopted to explain the role of the caseworker and the permanency committee when considering a foster parent's request and making a recommendation. OAR 413-120-0590 is being adopted to state how the child welfare program manager decides whether to proceed with a foster parent's request for consideration when a relative is later identified and expresses interest in being a potential adoptive resource. OAR 413-120-0595 is being adopted to cover policies about foster parents determined as a current caretaker prior to July 1, 2010.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-120-0500

### Purpose

These rules (OAR 413-120-0500 to 413-120-0595) establish the process by which a foster parent may request consideration as a current caretaker for the purpose of consideration as a potential adoptive resource as a part of permanency planning for a child or sibling group under consideration.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.285

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 34-2010, f. & cert. ef. 12-29-10

## 413-120-0510

### Definitions

The following definitions apply to OAR 413-120-0500 to 413-120-0595:

(1) "Adoptive resource" means an individual or individuals selected by the Department as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the Department review is complete.

(2) "Child" means a person under 18 years of age.

(3) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The concurrent permanent plan is developed simultaneously with the plan to return the child to the parents or legal guardians.

(4) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of adoption;

(b) Has cared for the child or at least one sibling in a sibling group under consideration for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, the siblings in a sibling group under consideration for adoption in the same adoptive family.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated children or young adults who are placed in the home by the Department.

(7) "General applicant" means an individual who:

(a) Is neither a relative nor current caretaker; and

(b) Has submitted a completed application to adopt a child.

(8) "Indian child" means any unmarried person who is under age 18 and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(9) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or potential permanency resource when the child or young adult likely is not returning to his or her parent.

(10) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other individuals who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(11) "Refugee child" means, as defined by ORS 418.925, a person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person in order to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(12) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

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(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult; or an individual who self-identifies, related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for Guardianship Assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may only be considered a relative for the purpose of eligibility for Guardianship Assistance and only when the requirements of all of the following subparagraphs are met:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) The Department has approved the foster parent for consideration as a guardian.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children's or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(15) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.945

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 34-2010, f. & cert. ef. 12-29-10

## 413-120-0521

### Substitute Care is a Temporary Resource

(1) At initial placement, the caseworker must inform the foster parent that substitute care is intended as a temporary placement resource.

(2) In limited circumstances, a foster parent may become an adoptive resource for a child.

(3) The child's caseworker must keep the foster parent informed of the child's permanency plan and concurrent permanent plan.

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 34-2010, f. & cert. ef. 12-29-10

## 413-120-0541

### When a Foster Parent Can Request Consideration as a Potential Adoptive Resource

(1) A foster parent may request consideration as a current caretaker for a child or a sibling group under consideration in the legal custody of the Department when the requirements of all of the following subsections are met:

(a) Adoption is each child's identified permanency plan or concurrent permanent plan, and the Department determines it is in the best interest of the child or a sibling group under consideration to proceed with identifying potential adoptive resources.

(b) The child or at least one sibling in a sibling group under consideration has been in the physical custody of the foster parent for the most recent 12 consecutive months.

(c) The foster parent is willing to be considered as a potential adoptive resource for the child's siblings currently in substitute care and under consideration for adoption in the same adoptive family.

(d) The caseworker and the caseworker's supervisor have complied with the requirements of both of the following paragraphs:

(A) Reviewed the Department's diligent efforts to identify, contact, and place a child with relatives and to place siblings together as required under both Child Welfare Policy I-E.1.1, "Search for and Engagement of a Child's Relatives", OAR 413-070-0060 to 413-070-0087 and Child Welfare Policy I-G.1.2, "Identification and Consideration of Potential Adoption Resources", OAR 413-120-0700 to 413-120-0760; and

(B) Confirmed there are no current Department actions to ---

(i) Identify a child's relative as defined in OAR 413-120-0510(12)(a)-(c); or

(ii) Assess an identified relative as defined in OAR 413-120-0510(12)(a)-(c) who has either expressed an interest in and needs to be or currently is being assessed as a potential adoptive resource.

(2) When a child has one or more siblings, and two or more foster parents meet the requirements of subsections (1)(a) to (1)(c) of this rule, each may request consideration as a current caretaker, and if a request is received, the Department must review each request as described in these rules (OAR 413-120-0500 to 413-120-0595).

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 34-2010, f. & cert. ef. 12-29-10

## 413-120-0570

### Permanency Committee Consideration of Current Caretaker

(1) When a foster parent is requesting consideration as current caretaker, the Department schedules a permanency committee pursuant to Child Welfare Policy, I-E.3.6, "Legal Permanency, Concurrent Planning, and Use of Permanency Committee", OAR 413-070-0500 to 413-070-0519.

(2) The permanency committee must review all of the information presented to the committee and consider the extent to which the foster parent meets the following:

(a) The standards for an adoptive home under OAR 413-120-0246;

(b) The extent to which the foster parent has the knowledge, skills, abilities and commitment to raise the child and each sibling if there are siblings under consideration for adoption in the same adoptive family; and

(c) The extent to which the ongoing needs for safety, permanency, and well-being of each child and each sibling, if there are siblings under consideration for adoption in the same adoptive family, will be met under OAR 413-070-0640.

(3) After completing the review under section (2) of this rule, the permanency committee considers all of the information, deliberates, and, when committee members agree, makes a recommendation to the Child Welfare Program Manager or designee.

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(4) When the permanency committee cannot reach agreement, each permanency committee member makes his or her respective recommendations known to the committee facilitator.

Stat. Auth.: ORS 418.005, 418.945  
Stats. Implemented: ORS 418.005, 418.937, 418.945, 419B.192  
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 34-2010, f. & cert. ef. 12-29-10

## 413-120-0580

### Decision and Department Actions

(1) The Child Welfare Program Manager or designee who makes the decision on behalf of the Department regarding a request of foster parent for consideration as a current caretaker must consider all of the following when making the decision:

- (a) The considerations in OAR 413-120-0570(2);
- (b) The information presented to the permanency committee; and
- (c) The recommendations of the permanency committee.

(2) The Child Welfare Program Manager's or designee's decision regarding the request of a foster parent for consideration as a current caretaker must be documented on a form approved by the Department and must specify:

- (a) Whether the foster parent will be considered; and
- (b) When the foster parent will be considered as a current caretaker, whether the adoption selection process will also include consideration of a potential adoptive resource who either is a:

- (A) Child's relative as defined in OAR 413-120-0510(12)(d); or
- (B) General applicant.

(3) When the foster parent will be considered as a current caretaker, the certifier or an adoption worker must complete a home study update within 90 calendar days of the decision.

Stat. Auth.: ORS 418.005, 418.945  
Stats. Implemented: ORS 418.005, 418.937, 418.945, 419B.192  
Hist.: CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04; Renumbered from 413-120-0550, CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 34-2010, f. & cert. ef. 12-29-10

## 413-120-0590

### When a Relative is Identified

When a child's relative is identified and expresses interest in being considered as a potential adoptive resource after a foster parent has requested consideration or a permanency committee has been scheduled, the Child Welfare Program Manager or designee must:

(1) Review the diligent efforts to identify and place a child with a relative and to place siblings together as required under Child Welfare Policy I-E.1.1., "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0063;

(2) Determine whether it is in the child's best interest for the relative to be considered; and

(3) Determine whether the permanency committee to consider the request of the foster parent will be held, cancelled, or postponed.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 34-2010, f. & cert. ef. 12-29-10

## 413-120-0595

### Foster Parent Determined as Current Caretaker before July 1, 2010

(1) When a foster parent had been recommended for consideration as a potential adoptive resource through a current caretaker committee or current caretaker committee held prior to July 1, 2010, the decisions made by the Department remain in effect until an adoption selection has been made.

(2) When a permanency committee recommends the current caretaker for consideration as a potential adoptive resource for a child, the current caretaker is considered pursuant to Child Welfare Policy I-G.1.5, "Adoption Placement Selection", OAR 413-120-0000 to 413-120-0060.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005, 419B.192  
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 34-2010, f. & cert. ef. 12-29-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 35-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 12-29-10

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 413-120-0700, 413-120-0710, 413-120-0720, 413-120-0730, 413-120-0750, 413-120-0760

**Subject:** OAR 413-120-0700 to 413-120-0760 about identification and consideration of potential adoptive resources are being adopted

to set out clarify the Department's preference for placement with relatives and siblings for purposes of adoption and describe requirements regarding recruitment for adoptive resources when a child is in the legal custody of the Department as well as to make permanent and improve upon the temporary rules adopted on July 1, 2010. OAR 413-120-0700 is being adopted to state the purpose of the rules regarding the Department's requirements identifying and considering potential adoptive resources. OAR 413-120-0710 is being adopted to define certain terms which are included in the rules. OAR 413-120-0720 is being adopted to set out and clarify the Department's required efforts for placing with siblings and relatives. OAR 413-120-0730 is being adopted to state the Department's requirements regarding placement preferences including assessing the potential resources in the order of preference and information regarding sibling planning. OAR 413-120-0750 is being adopted to more clearly describe the efforts required by the Department regarding general recruitment. OAR 413-120-0760 is being adopted to clarify information regarding steps the Department is required or may follow when identifying a child's potential adoptive resources.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-120-0700

### Purpose

These rules (OAR 413-120-0700 to 413-120-0760) describe the responsibilities of the Department to ---

(1) Identify the potential adoptive resources for a child or sibling group under consideration to best meet the current and lifelong needs of each child for safety, permanency, and well-being; and

(2) Establish an order of preference for assessment and consideration of potential adoptive resources.

Stat. Auth.: ORS 109.309, 409.050, 418.005  
Stats. Implemented: ORS 109.309, 409.010, 418.005, 418.280, 418.285, 418.937, 419B.090, 419B.100, 419B.192  
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10

## 413-120-0710

### Definitions

The following definitions apply to OAR 413-120-0700 to 413-120-0760:

(1) "Adoption home study" means a written report documenting the result of an assessment conducted by the Department, a licensed adoption agency, or another public agency to evaluate the suitability of an individual or individuals to adopt and make a lifelong permanent commitment to a child or children.

(2) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request or, if a review was requested, the selection was sustained by that review and the review is complete.

(3) "Child" means a person under 18 years of age.

(4) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of adoption;

(b) Has cared for the child or at least one sibling in a sibling group under consideration for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, the siblings in a sibling group under consideration for adoption in the same adoptive family.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "General applicant" means an individual who ---

(a) Is neither relative or current caretaker; and

(b) Has submitted a complete application to adopt a child.

(8) "Indian child" means any unmarried person who is under 18 years of age and is either --

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.



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(9) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or potential permanent resource when the child or young adult likely is not returning to his or her parent.

(10) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(11) "Refugee child" has the meaning given that term per ORS 418.925.

(12) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(E) The adoptive parent of a sibling of a child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of a child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for Guardianship Assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may only be considered a relative for the purpose of eligibility for Guardianship Assistance and only when the requirements of all of the following subparagraphs are met:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) The Department has approved the foster parent for consideration as a guardian.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

Stat. Auth.: ORS 109.309, 418.005

Stats. Implemented: ORS 109.309, 418.005, 418.285, 418.937, 419B.090, 419B.100, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10

## 413-120-0720

### Department's Efforts to Place with Relatives and to Place Siblings Together

(1) The Department's preference for placement of a child for the purpose of adoption is placement with relatives and placing siblings together.

(2) Prior to pursuing a non-related potential adoptive resource, the caseworker and the caseworker's supervisor must comply with the requirements of both of the following subsections:

(a) Review the Department's diligent efforts to identify, contact, and place a child or young adult with relatives and to place siblings together as required under Child Welfare Policy I-E.1.1, "Search for and Engagement of a Child's Relatives", OAR 413-070-0060 to 413-070-0087; and

(b) Confirm there are no current Department actions to identify or assess a child's relative who has either expressed an interest in and needs to be or currently is being assessed as a potential adoptive resource, unless OAR 413-120-0730(1)(b) applies.

Stat. Auth.: ORS 109.309, 418.005

Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10

## 413-120-0730

### Order of Preference for Identification of Potential Adoptive Resources

(1) Except as provided in sections (2) and (3) of this rule, when considering potential adoptive resources for a child or sibling group under consideration, the caseworker must consider the needs and the best interest of each child, and assess the knowledge, skills, and abilities of each potential adoptive resource in the following order of preference:

(a) A relative as defined in OAR 413-120-0710(12)(a)-(c);

(b) A relative as defined in OAR 413-120-0710(12)(d) and a current caretaker;

(c) A general applicant.

(2) When the child is identified as an Indian child, the caseworker must comply with Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-070-0100 to 413-070-0260.

(3) When the child is identified as a refugee child, the caseworker must comply with Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

Stat. Auth.: ORS 109.309, 418.005

Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10

## 413-120-0750

### Recruitment Efforts

(1) Except as provided in section (2) of this rule, the Department's recruitment efforts may not consider the race, color, or national origin of a potential adoptive resource or a child.

(2) When recruiting potential adoptive resources for an Indian child, the Department may consider the cultural heritage of a potential adoptive resource or the child under Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-070-0100 to 413-070-0260.

(3) The Department must begin recruitment for the child or sibling group under consideration in a timely manner that is appropriate to each child's permanency and concurrent permanent plans.

(4) When a child is not fully free for adoption, the legal assistance specialist must:

(a) Determine when recruitment may begin;

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(b) Determine whether recruitment may begin for a child with extraordinary needs before the Department initiates the process to free the child for adoption; and

(c) Notify the caseworker to begin recruitment efforts.

(5) As part of the identification of general applicants who will be considered in the adoption placement selection process, the child's caseworker must conduct recruitment activities including, at a minimum, ensuring a Waiting Child Bulletin has been posted, for at least 30 days, unless one or more of the following subsections applies:

(a) An exception to this timeline has been approved by the Assistant Adoption Program Manager or designee.

(b) The Department has determined, under Child Welfare Policy I-E.3.6, "Legal Permanency, Concurrent Planning and Use of Permanency Committee", OAR 413-070-0516, that an individual known to the child or sibling group under consideration, should be assessed for consideration as the potential adoptive resource, based upon the following:

(A) The best interest of each child under consideration;

(B) The strength of the relationship between each child under consideration and the individual;

(C) The likelihood that the individual will have a positive adoption home study and be able to meet the Department standards under Child Welfare Policy I-G.1.3, "Adoption Applications, Adoption Home Studies, and Standards for Adoption, OAR 413-120-0246(1); and

(D) The individual has demonstrated the knowledge, skills, abilities, and commitment to raise each child under consideration for adoption; and

(E) The individual has the capacity to meet the current and lifelong safety, permanency, and well-being needs of the child under Child Welfare Policy I-E.3.1, "Placement Matching", OAR 413-070-0640.

(6) Recruitment activities under section (5) of this rule are not required when the Department has planned for:

(a) The child or sibling group under consideration to be adopted by a relative of at least one of the siblings under consideration; or

(b) The child or sibling group under consideration to be adopted by a current caretaker.

(7) The Department's recruitment efforts for a child or sibling group under consideration must be documented in the Department's information system.

Stat. Auth.: ORS 109.309, 418.005

Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10

## 413-120-0760

### Identification of a Child's Potential Adoptive Resources

(1) When identifying potential adoptive resources for a child, the child's caseworker may:

(a) After discussion with his or her supervisor and on a case-by-case basis, consult with a birth parent to identify one to three potential adoptive resources; and

(b) Provide a birth parent with non-identifying information from the adoption home study of a potential adoptive resource who is a general applicant not known to the parent or child.

(2) When more than one relative is interested in being an adoptive resource, the Department must consult with those interested to facilitate agreement on the most appropriate potential adoptive resource.

(a) When agreement cannot be reached, the Department considers relatives among both maternal and paternal family members who have expressed an interest, and chooses up to a total of three families for adoption home studies, to be conducted by either the Department or another public or private agency.

(b) When an adoption home study has been initiated and the potential adoptive resource is not approved or withdraws, the Child Welfare Program Manager or designee decides whether the Department will initiate adoption home studies with additional relatives based upon:

(A) The best interests of the child; and

(B) The impact on achieving permanency when pursuing additional studies.

(3) The child's caseworker must comply with the requirements of all of the following subsections:

(a) Make reasonable efforts to identify and place the child with an adoptive resource in a timely manner.

(b) Request input about the knowledge, skills, abilities, and commitment a potential adoptive resource needs to best be able to meet the current and lifelong needs of the child from --

(A) Professionals who have worked closely with the child, when applicable; and

(B) The child's attorney, CASA, tribal representative, RCWAC representative, and substitute caregiver, when applicable.

(c) Receive and review adoption home studies in a timely manner.

(d) Following consultation with his or her supervisor, identify up to three potential adoptive resources to be considered for adoption placement selection who:

(A) Meet the standards of an adoptive home in Child Welfare Policy I-G.2.1, "Adoption Applications, Adoption Home Studies, and Standards for Adoption", OAR 413-120-0246;

(B) Have the knowledge, skills, abilities, and commitment to raise each child under consideration for adoption; and

(C) Have the capacity to meet the current and lifelong safety, permanency, and well-being needs of the child under Child Welfare Policy I-E.3.1, "Placement Matching", OAR 413-070-0640.

(e) Consult with the adoption worker for each of the up to three potential adoptive resources and follow the additional guidelines under Child Welfare Policy I-G.1.5, "Adoption Placement Selection", OAR 413-120-0000 to OAR 413-120-0060.

(f) In consultation with the supervisor, determine the appropriate adoption selection option under Child Welfare Policy I-G.1.5, "Adoption Placement Selection", OAR 413-120-0020.

(g) Document the efforts made under this section in the Department's information system.

Stat. Auth.: ORS 109.309, 418.005

Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 36-2010(Temp)

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 12-29-10 thru 6-27-11

**Notice Publication Date:**

**Rules Adopted:** 413-070-0651, 413-070-0655, 413-070-0660, 413-070-0665, 413-070-0670

**Subject:** OAR 413-070-0651 regarding the purpose of the rules about guardianship as a permanency plan, OAR 413-070-0655 regarding definitions of certain terms used in these rules, OAR 413-070-0660 regarding consideration of guardianship as a permanency plan, OAR 413-070-0665 regarding consideration of a substitute caregiver as a prospective guardian, and OAR 413-070-0670 regarding approval and implementation of a guardianship permanency plan are being adopted because the Department does not have a policy that adequately and fully describes the responsibilities of the Department to determine the appropriate use of guardianship as a permanency plan unless the child is eligible for guardianship assistance. The new rules describe the responsibilities of the Department in determining the appropriateness of guardianship as a permanency plan for a child regardless of the child's eligibility for guardianship assistance. The goal of a permanency plan is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-070-0651

### Purpose

The purpose of these rules, OAR 413-070-0651 to 413-070-0670, is to describe the responsibilities of the Department to determine the appropriate use of guardianship, as established by the court under ORS 419B, as a permanency plan for a child in the care or custody of the Department. These rules supersede OAR 413-070-0929(3).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11

## 413-070-0655

### Definitions

The following definitions apply to OAR 413-070-0651 to 413-070-0670:

(1) "Child" means a person under 18 years of age.

(2) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of

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the permanency plan is to return the child to the parents. The concurrent permanent plan is developed simultaneously with the plan to return the child to the parents or legal guardians.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "Guardian" means an individual granted guardianship by the juvenile court under ORS 419B.365 or ORS 419B.366.

(5) "Guardianship assistance" means assistance provided by the Department to a guardian on behalf of an eligible child to offset the costs associated with meeting the ongoing needs of the child. Guardianship assistance may include cash payments, medical coverage, or reimbursement of nonrecurring expenses.

(6) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(7) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(8) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(9) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult; or an individual who self-identifies, related to

the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the family of the child or young adult; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to time the Department placed the child in substitute care.

(e) For eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may only be considered a relative for the purpose of eligibility for guardianship assistance and only when the requirements of all of the following subparagraphs are met:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) The Department has approved the foster parent for consideration as a guardian.

(10) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(11) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11

## 413-070-0660

### Consideration of Guardianship as a Permanency Plan

(1) The Department may consider guardianship as a permanency plan for a child in the care or legal custody of the Department based on the individual safety, permanency, and well-being needs of a child, when the Department has determined:

(a) The child is unable to safely return to the home of a parent; and

(b) It is not in the child's best interests to be placed for adoption.

(2) When considering guardianship as the permanency plan, the case-worker must:

(a) Consult with a child 14 years of age or older;

(b) Seek input from a child under the age of 14, if developmentally appropriate;

(c) Assess the parents' acceptance of guardianship as a permanency plan, their desire for continued contact with the child, and how this will impact the plan; and

(d) Document in the Department's information system how the requirements of subsections (a), (b), and (c) of this section were met.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11

## 413-070-0665

### Consideration of a Substitute Caregiver as a Potential Guardian

(1) A child's relative, as defined in OAR 413-070-0655(9)(a) through (d), may be considered as a potential guardian for a child when the child has lived with the relative for at least six consecutive months and meets the additional requirements of section (3) of this rule. The relative may also be considered for a child's siblings who also have a permanency plan or concurrent permanent plan of guardianship, regardless of the amount of time the siblings have lived with the potential guardian, provided the relative meets the criteria in section (3) regarding the siblings under consideration.

(2) Unless section (1) applies, a substitute caregiver who meets the criteria described in section (3) of this rule may be considered as a potential guardian for a child and any siblings of the child who also have a



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permanency plan or concurrent permanent plan of guardianship, regardless of the amount of time they have lived with the potential guardian or been in the custody of the Department, provided the substitute caregiver also meets the criteria in section (3) regarding the siblings under consideration and the following has occurred:

(a) The caseworker and the caseworker's supervisor have complied with the requirements of both of the following subsections:

(A) Reviewed the Department's diligent efforts to identify, contact, and place a child with relatives and to place siblings together as required under Child Welfare Policy I-E.1.1, "Search for and Engagement of a Child's Relatives", OAR 413-070-0060 to 413-070-0087; and

(B) Confirmed there are no current Department actions to:

(i) Identify a child's relative as defined in OAR 413-070-0655(9)(a)-(d);

(ii) Assess an identified relative as defined in OAR 413-070-0655(9)(a)-(d) who has either expressed an interest in and needs to be or currently is being assessed as a permanency resource.

(b) The child has been in the care or legal custody of the Department for at least 12 months; and

(c) The child has been in the physical custody of the substitute caregiver for at least 12 months.

(3) In order to be considered as a potential guardian, the potential guardian must:

(a) Have a current Certificate of approval from one of the following entities:

(A) The Department under Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396.

(B) A participating tribe when the potential guardian is currently certified as a foster home by the participating tribe as meeting the tribe's certification and licensing standards; or

(C) Another state when the potential guardian is currently certified or otherwise approved by the state in which the potential guardian resides and approved as a placement for the child under the Interstate Compact on Placement of Children (ICPC).

(b) Agree with the Department that the child and any sibling under consideration and the potential guardian can maintain a stable relationship and function effectively without Department supervision.

(c) Have an updated home study describing how the potential guardian's skills and abilities meet the best interests and needs for safety and permanency for the child and any sibling under consideration.

(d) Have adequate means of financial support and connections to community resources.

(e) Have a strong commitment to caring permanently for the child and any sibling under consideration for whom the potential guardian has provided care as a substitute caregiver.

(4) The caseworker must complete all of the following requirements and present the results to a permanency committee, when scheduled:

(a) Assess the potential guardian's ability to provide safety, permanency, and well-being for the child and any sibling under consideration;

(b) Assess with the certifier of the potential guardian the extent to which the ongoing needs for safety, permanency, and well-being of the child and any sibling under consideration are being met pursuant to Child Welfare Policy I-E.3.1, "Placement Matching", OAR 413-070-0640;

(c) Assess the potential guardian's commitment to raise the child and any sibling under consideration;

(d) Assure the potential guardian understands the duties and responsibilities of a guardian;

(e) Agree that the child, any sibling under consideration, and the potential guardian can maintain a stable relationship and function effectively without Department supervision; and

(f) Consult with the guardian regarding guardianship assistance under Child Welfare Policy I-E.3.6.2, "Guardianship Assistance", OAR 413-070-0900 to 413-070-0979.

(A) When guardianship assistance will be requested, inform the potential guardian of the eligibility, application, and ongoing requirements of guardianship assistance as described in Child Welfare Policy I-E.3.6.2, "Guardianship Assistance", OAR 413-070-0900 to 413-070-0979.

(B) When guardianship assistance will not be requested or may not be approved due to eligibility restrictions, ensure that the potential guardian's means of financial support and connections to community resources are sufficient to meet the needs of the child and any sibling under consideration without this assistance.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11

## 413-070-0670

### Approval and Implementation of a Guardianship Permanency Plan

(1) When the Department is considering a change in a child's permanency plan, the Department makes the determination pursuant to Child Welfare Policy I-E.3.6, "Legal Permanency, Concurrent Planning, and Use of Permanency Committee", OAR 413-070-0500 to 413-070-0519.

(2) The determination of guardianship as the appropriate permanency plan for a child must be based upon:

(a) How a permanency plan of guardianship meets the child's needs, best interests, and the requirements OAR 413-070-0660(1);

(b) Whether the Department has provided the child and the child's parents, an opportunity to identify available permanency resources; and

(c) Whether the potential guardian is able to meet the child's needs pursuant to Child Welfare Policy I-E.3.1, "Placement Matching", OAR 413-070-0640.

(3) The permanency committee must review all of the information presented to the committee and make recommendations regarding:

(a) Guardianship as an appropriate permanency plan for the child; and

(b) Whether the potential guardian meets the child's needs as described in subsection (2)(c) of this rule.

(4) Following a Department decision to approve guardianship as a permanency plan, within 30 days the caseworker must request a permanency hearing before the court. At the court hearing, the caseworker must:

(a) Recommend that the court approve changing the child's permanency plan to guardianship;

(b) Inform the court whether or not the guardian resource is applying for guardianship assistance; and

(c) Inform the court that after the Department has negotiated the amount or type of guardianship assistance with the guardian resource a subsequent court hearing will be requested to allow the order of guardianship to be entered.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005, 419A.004

Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 1-2011

**Filed with Sec. of State:** 1-4-2011

**Certified to be Effective:** 1-4-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 413-040-0240

**Rules Repealed:** 413-040-0240(T)

**Subject:** OAR 413-040-0240 about the financial and medical responsibility of an agency that sends, brings, or causes to be sent or brought a child to another state under the Interstate Compact on the Placement of Children (ICPC) is being amended to correct a scrivener's error when the rule was amended and remove contradictory text about the payments made once a child leaves the state. It makes permanent a temporary rule amendment from November 3, 2010 that was retroactive to September 2, 2010.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-040-0240

### Financial and Medical Responsibility of Sending Agency

(1) The sending agency is responsible for the support and maintenance of the child during the period of the placement.

(2) The sending agency is responsible for arranging for medical coverage for the child before the child is placed with an ICPC approved family.

(3) When, subsequent to ICPC approval, the Department places a child out of state with a foster parent or relative caregiver, foster care payment is determined in accordance with Child Welfare Policy I-E.5.1, "Payment for Family Foster Care, Base Rate, Shelter Care, Enhanced Shelter Care, Level of Care, Chafee Housing, and Independent Living Housing Subsidy" OAR 413-090-0000 to 413-090-0050.

Stat. Auth.: ORS 409.050, 418.005, & 418.647

Stats. Implemented: ORS 409.010, 417.200-417.260, 418.005 & 418.647

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 3-2010(Temp), f. & cert. ef. 3-15-10 thru 9-10-10; CWP 18-2010, f. & cert. ef. 9-2-10; CWP 20-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; CWP 1-2011, f. & cert. ef. 1-4-11

# ADMINISTRATIVE RULES

## 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 41-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 461-135-1197, 461-155-0528

**Rules Amended:** 461-001-0000, 461-025-0311, 461-101-0010, 461-110-0630, 461-115-0071, 461-120-0210, 461-130-0305, 461-130-0310, 461-130-0315, 461-130-0327, 461-130-0328, 461-130-0330, 461-130-0335, 461-135-0010, 461-135-0210, 461-135-0400, 461-135-0780, 461-135-1100, 461-135-1125, 461-135-1195, 461-135-1250, 461-150-0055, 461-155-0030, 461-155-0035, 461-155-0180, 461-155-0225, 461-155-0320, 461-155-0688, 461-155-0693, 461-160-0410, 461-160-0430, 461-160-0700, 461-170-0011, 461-175-0010, 461-175-0200, 461-175-0250, 461-193-0560

**Rules Repealed:** 461-025-0311(T), 461-101-0010(T), 461-110-0630(T), 461-115-0071(T), 461-130-0320, 461-130-0323, 461-130-0325, 461-135-0210(T), 461-135-0400(T), 461-135-1100(T), 461-135-1125(T), 461-135-1250(T), 461-150-0055(T), 461-155-0030(T), 461-155-0035(T), 461-155-0180(T), 461-155-0225(T), 461-155-0320(T), 461-155-0528(T), 461-155-0688(T), 461-155-0693(T), 461-160-0430(T), 461-160-0530, 461-160-0700(T), 461-175-0010(T), 461-175-0200(T), 461-175-0250(T), 461-193-0560(T)

**Subject:** OAR 461-001-0000 which defines certain terms used in the eligibility rules for numerous programs is being amended to indicate that State Plan Personal Care (SPPC) situations, in the context of community based care, are not considered nonstandard living arrangements. This rule is also being amended to define certain terms as part of the implementation of Express Lane Eligibility (ELE).

OAR 461-025-0311 about which clients may be eligible for continuing benefits pending a contested case hearing in the Department's public assistance, medical and supplemental nutrition assistance programs is being amended to state when there is no right to continuing benefits in the Department's programs when the pending contested case hearing is due to a mass change reducing, ending, or otherwise changing program benefits. This rule also is being amended to make permanent the temporary changes made to this rule effective August 16, 2010.

OAR 461-101-0010 about the acronyms the Department uses in the chapter 461 rules is being amended in response to House Bill 2116 (2009 Or. Laws ch. 867) to revise the acronym for Oregon Health Plan Persons Under 19 (OHP-CHP). This rule is being further amended to remove outdated program acronyms. This rule also is being amended to make permanent the temporary changes of August 16, 2010.

OAR 461-110-0630 about how the Department determines the composition of a need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) is being amended to state that a need group in the Healthy KidsConnect (HKC) or Oregon Health Plan (OHP) program also may be formed under Express Lane Eligibility (ELE) provisions in OAR 461-150-0055. This rule also is being amended to make permanent the temporary rule changes of August 16, 2010.

OAR 461-115-0071 about who must sign an application and complete the application process for the Department's programs administered under chapter 461 of the Oregon administrative rules is being amended to allow an application to be signed and the application process completed by a single individual in a household in the Healthy KidsConnect (HKC), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Assistance to Needy Families (TANF) pro-

grams. This rule also is being amended to make permanent the temporary rule amendments made effective July 15, 2010.

OAR 461-120-0210 about when a client is required to provide or apply for a social security number (SSN) to be eligible for Department programs is being amended to state when a newborn child may be added to a Temporary Assistance for Needy Families (TANF) program benefit group without meeting the SSN requirements of this rule.

OAR 461-130-0305, 461-130-0310, 461-130-0315, 461-130-0320, 461-130-0323, 461-130-0325, 461-130-0327, 461-130-0328, 461-130-0330, and 461-130-0335 about the Department requirements for certain Post-Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) program clients to participate in Department employment programs are being changed to reflect current Department terminology, policy, and practices. These rules set the requirements and responsibilities around the Department administration of the employment programs, state which clients must participate in the employment programs, state the clients' responsibilities when required to participate in the employment programs, and state the penalties to clients for unexcused noncompliance with employment program participation requirements. OAR 461-130-0305 about general provisions for client participation in the employment programs of the Post-Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs also is being amended to revise its description of what these rules cover and definitions for key terms used in the division 130 of these rules. This rule also is being amended to state when a SNAP program client is registered for an employment program. OAR 461-130-0310 about how the Department assigns clients to one or more participation classifications in the Post-Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs also is being amended to state that the Department classifies all Post-TANF program clients who participate in an employment program as volunteers. This rule also is being amended to change the term child in the provisions concerning the Pre-TANF, REF, and TANF programs to the term dependent child. This rule also is being amended to restate which SNAP program clients the Department considers exempt from participating and which are mandatory to participate in the SNAP employment program. OAR 461-130-0315 about the requirements a mandatory client selected by the Department to participate in a Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) program employment must meet also is being amended to state what a client must do when offered employment, to maintain employment, and to complete employment-related activities. This rule also is being amended to state what information the client must report to the Department and how this information must be reported. OAR 461-130-0320 about the employment program participation requirements for a mandatory Supplemental Nutrition Assistance Program (SNAP) client is being repealed and its relevant provisions are being placed into OAR 461-130-0315 to streamline the Department's rules by placing all mandatory client participation requirements into OAR 461-130-0315. OAR 461-130-0323 about the participation requirements for State Family Pre-SSI/SSDI (SFPSS) program clients is being repealed and its relevant provisions are being placed into OAR 461-135-1195 to streamline the Department's rules and properly place the rule's relevant provisions. OAR 461-130-0325 about the employment program participation requirements for mandatory Refugee (REF), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families

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(TANF) program clients and exempt SNAP program clients is being repealed and its relevant provisions are being placed into OAR 461-130-0315 and 461-130-0330, as applicable, to streamline the Department's rules and properly place the rule's relevant provisions. OAR 461-130-0327 about the circumstances under which a client is excused for good cause for failure to comply with the requirements of an employment program also is being amended to restate the circumstances under which a client is excused for good cause, including the Department's failure to provide a reasonable accommodation when the failure to comply is caused by an aspect of the client's disability. This rule also is being amended to state when the Department may require documentation of a client's physical or mental impairment. OAR 461-130-0328 about the effect of a strike on a client's requirements to participate in an employment program also is being amended to state when a Refugee Assistance (REF) program filing group (the individuals from the household whose circumstances are considered in the eligibility determination process) is ineligible for program benefits due to a member being a striker. OAR 461-130-0330 about the circumstances under which the Department may disqualify a Post-Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), Supplemental Nutrition Assistance Program (SNAP), or Temporary Assistance for Needy Families (TANF) program client from receiving program benefits also is being amended to state that a volunteer participant in an employment program may not be disqualified from program benefits. This rule also is being amended to state when a mandatory Pre-TANF, REF, or TANF client without good cause may be disqualified from program benefits. This rule also is being amended to state when a SNAP program client classified as exempt may be disqualified from program benefits. OAR 461-130-0335 about the circumstances under which the Department may remove the disqualification of a client in the Refugee (REF), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs is being amended to restate when the Department removes the disqualification from program benefits for a client disqualified under OAR 461-130-0330 and the effect the removal has on the restoration of the client's benefits.

OAR 461-135-0010 about when a client is assumed eligible for benefits under certain medical programs is being amended to remove the requirement that a child meet the citizenship verification requirements under OAR 461-115-0705 to be assumed eligible for the Medical Coverage for Children in Substitute or Adoptive Care (SAC) program.

OAR 461-135-0210 about when a Temporary Assistance for Needy Families (TANF) program client or caretaker relative of a TANF program client may receive a cooperation incentive (a payment made to a JOBS program client to motivate and recognize progress toward employment and self-sufficiency) is being amended to state that the cooperation incentive payments ended effective September 30, 2010. This rule also is being amended to make permanent the temporary changes made to this rule effective August 16, 2010.

OAR 461-135-0400 about the specific eligibility requirements for child care payments and the Employment Related Day Care (ERDC) program is being amended as part of the implementation of budget cuts at the Department. The amended rule adds to the requirements for new applicants to this program with a requirement that new applicants must have received benefits in the Refugee Assistance (REF), State Family Pre-SSI/SSD (SFPSS), or Temporary Assistance for Needy Families (TANF) programs within at least one of the prior three months and clarifies who is considered a new applicant. This rule also is being amended to state that applicants denied eligibility for ERDC program benefits will be placed on a reservation list. This rule also is being amended to make permanent the temporary rule changes made effective October 1, 2010.

OAR 461-135-0780 about eligibility for Pickle Amendment clients in the Oregon Supplemental Income Program Medical (OSIPM) pro-

gram is being amended to identify that a term used in this rule is defined in another rule and cross-reference that rule.

OAR 461-135-1100 about the specific eligibility requirements for an individual to receive Oregon Health Plan (OHP) program benefits is being amended to remove the eligibility requirement that an OHP Adults (OHP-OPU) program client select a medical, dental, and mental health managed health care plan (MHCP) or primary care case manager (PCCM), unless exempted under other Department rules. In addition, this rule is being amended to state the circumstances under which the Department may enroll a child in Oregon Health Plan Persons Under 19 (OHP-CHP), Oregon Health Plan Children (OHP-OPC), or Healthy KidsConnect (HKC) program based on a determination made by an Express Lane Agency (ELA). This rule also is being amended to state when the Department may use Express Lane Eligibility (ELE) for a child. Moreover, this rule is being amended to provide that in the OHP-CHP program a child no longer must select a managed care plan for medical or dental as an eligibility requirement. This rule also is being amended to make permanent the temporary changes made effective July 15, 2010, August 16, 2010, and August 25, 2010.

OAR 461-135-1125 about how the Department determines which individuals included on the Oregon Health Plan - Adults (OHP-OPU) program Standard Reservation List are selected to apply for the OHP-OPU program is being amended to restate the definition for "OHP Standard Reservation List Applicant," and state how the Department responds to an individual requesting and being granted placement on the OHP Standard Reservation List. This rule is being amended to state that the Department must review applications received for eligibility under all medical assistance programs, and how new OHP-OPU applicants are managed. This rule also is being amended to make permanent the temporary rule changes made effective August 16, 2010 and October 1, 2010.

OAR 461-135-1195 about the specific requirements to be eligible for the State Family Pre-SSI/SSDI (SFPSS) program is being amended to add requirements previously in OAR 461-130-0323 that state the activities in which an SFPSS program client is required to or may participate, and to state the information which an SFPSS client must provide to the Department.

OAR 461-135-1197 about how the Department determines if a client in the State Family Pre-SSI/SSDI (SFPSS) program has good cause for failure to comply with a requirement of the SFPSS program is being adopted to state when an SFPSS program client has good cause for failure to comply with a requirement of the SFPSS program.

OAR 461-135-1250 about specific client eligibility and participation requirements in the Post-TANF program is being amended to state that effective October 1, 2010 the monthly Post-TANF benefit amount will be \$50 (reduced from \$100). This rule also is being amended to make permanent the temporary changes made to this rule effective August 16, 2010.

OAR 461-150-0055 about eligibility and budgeting in the Oregon Health Plan (OHP) program is being amended to state how the Department determines the budget month (the calendar month from which information is used to determine a client's eligibility and benefit level) when the Department initiates a redetermination of eligibility. This rule also is being amended to state how the Department determines the composition of the need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) and the income of the financial group (the individuals whose income and resources count in determining eligibility and benefit levels) when an Express Lane Agency (ELA) determination finds a child eligible for the Oregon Health Plan Persons Under 19 (OHP-CHP), Oregon Health Plan Children (OHP-OPC), or Healthy KidsConnect (HKC) program. This rule also is being amended to make permanent the temporary changes made effective August 16, 2010.

OAR 461-155-0030 about the income and payment standards in the Refugee Assistance (REF) and Temporary Assistance for Needy



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Families (TANF) programs is being amended to state the payment standard (used to calculate cash benefits for a need group with an adult) that became effective on October 1, 2010. This rule also is being amended to make permanent the temporary changes made to this rule effective August 16, 2010.

OAR 461-155-0035 about how the Department determines the amount of the payment for a cooperation incentive (a monthly payment added to the cash grant) for a need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) in the Refugee Assistance (REF) and Temporary Assistance for Needy Families (TANF) programs is being amended to state that the cooperation incentive payments ended effective September 30, 2010. This rule also is being amended to make permanent the temporary changes made to this rule effective August 16, 2010.

OAR 461-155-0180 about the poverty related income standards used in some of the Department's programs is being amended to state the monthly income standard when set at 163 percent of the 2010 federal poverty level. This rule also is being amended to restate the poverty related income standards based on the 2010 federal poverty level. In addition, this rule is being amended to make permanent the temporary changes made effective August 16, 2010.

OAR 461-155-0225 about the income standards used in some medical programs is being amended to revise the income standard in the Oregon Health Plan and Healthy KidsConnect programs for gross income from a business entity assigned to a budget month (the calendar month from which information is used to determine a client's eligibility and benefit level). This rule also is being amended to state the Department determines the countable income standard for a child found eligible for medical assistance benefits by an Express Lane Agency (ELA) determination under OAR 461-150-0055(5). In addition, this rule is being amended to make permanent the temporary changes made effective August 16, 2010.

OAR 461-155-0320 about the payment standards (used to calculate cash benefits for a need group) in the State Family Pre-SSI/SSDI (SFPSS) program is being amended to state the payment standards that became effective on October 1, 2010. This rule also is being amended to make permanent the temporary changes made to this rule effective August 16, 2010.

OAR 461-155-0528 about special need emergency assistance payments for clients in the Oregon Supplemental Income Program Medical (OSIPM) program is being adopted to provide special need emergency assistance payments to certain OSIPM program clients who experience unexpected costs, or loss of income or resources. This rule also is being adopted to make permanent the temporary changes to this rule effective October 13, 2010.

OAR 461-155-0688 about prescription drug co-pay coverage in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to restate which OSIPM program clients receiving Supplemental Security Income (SSI) payments are eligible for the co-pay coverage. This rule also is being amended to make permanent the temporary changes made effective October 1, 2010.

OAR 461-155-0693 about transportation services payments in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to restate which OSIPM program clients receiving Supplemental Security Income (SSI) payments are eligible for the payments. This rule also is being amended to make permanent the temporary changes made effective October 1, 2010.

OAR 461-160-0410 about the treatment of income and income deductions in the Supplemental Nutrition Assistance Program (SNAP) when a group includes ineligible or disqualified members is being amended to restate how the Department calculates SNAP program benefits when a qualified non-citizen is a member of the financial group (the individuals whose income and resources count in determining eligibility), does not meet alien status requirements, and is not in the need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) and the filing group (the individuals whose circumstances are considered

in the eligibility determination process) received a Temporary Assistance for Needy Families (TANF) program grant.

OAR 461-160-0430 about deductions from countable income made to determine adjusted income for the Supplemental Nutrition Assistance Program (SNAP) is being amended to restate when an income deduction for dependent care costs is allowed.

OAR 461-160-0530 about calculating benefits for SSI-eligible clients living in the community in the OSIP (Oregon Supplemental Income Program) program is being repealed to make the rules consistent with the changes to the supplemental income payment (SIP) that were effective January 1, 2010.

OAR 461-160-0700 about how the Department uses income when determining eligibility for Oregon Health Plan (OHP) and Healthy KidsConnect (HKC) program benefits is being amended to state that its provisions apply to the HKC program. This rule also is being amended to state how the Department determines the need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) members and income when an Express Lane Agency (ELA) is determining whether a child meets the income standard. In addition, this rule is being amended to make permanent the temporary changes made effective August 16, 2010.

OAR 461-170-0011 about which changes in circumstances that a client must report and how the client must report the changes is being amended to restate whose income a Supplemental Nutrition Assistance Program (SNAP) client assigned to the Simplified Reporting System (SRS) must report to the Department when that income exceeds the SNAP program countable income limit.

OAR 461-175-0010 about what information a decision notice (written notice of a decision by the Department regarding an individual's eligibility for benefits in a program) the Department sends to a client must include is being amended to revise the information that a notice sent due to a mass change to payments in a program operated by the Department must include. This rule also is being amended to make permanent the temporary changes made to this rule effective August 16, 2010.

OAR 461-175-0200 which provides general information about the decision notices (written notices of decisions by the Department regarding an individual's eligibility for benefits in a program) the Department sends to clients is being amended to state the type of notice the Department sends and what the notice must include when a child is found eligible for Healthy KidsConnect (HKC) program benefits based on an Express Lane Agency (ELA) determination. This rule also is being amended to make permanent the temporary changes made effective August 16, 2010.

OAR 461-175-0250 about the notice the Department sends to clients when making a mass change to program eligibility or benefit levels is being amended to include mass changes payments in a program operated by the Department. This rule also is being amended to make permanent the temporary changes made to this rule effective August 16, 2010.

OAR 461-193-0560 about the payment standards (used to calculate cash benefits for a client) in the Refugee Case Services Project (RCSP) program is being amended to state the payment standards that became effective on October 1, 2010. This rule also is being amended to make permanent the temporary changes made to this rule effective August 16, 2010.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 461-001-0000

#### Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDS), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in

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which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) means the Director of DHS.

(3) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(4) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(5) "Adoption assistance" means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(6) "Assets" mean income and resources.

(7) "Basic decision notice" means a decision notice mailed no later than the date of action given in the notice.

(8) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.

(9) "Budgeting" means the process of calculating the benefit level.

(10) "Budget month" means the calendar month from which non-financial and financial information is used to determine eligibility and benefit level for the payment month.

(11) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Services does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to \$50,000);

(C) Dependent care assistance plans; and

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(12) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.

(13) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(14) "Caretaker relative" means a caretaker who meets the requirements of one of the following subsections:

(a) Is one of the following relatives of the dependent child:

(A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(B) Stepfather, stepmother, stepbrother, and stepsister.

(C) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(b) Is or was a spouse of an individual listed in subsection (a) of this section.

(c) Met the definition of caretaker relative under subsection (a) or (b) of this section before the child was adopted (notwithstanding the child's subsequent adoption).

(15) "Certification period" means the period for which a client is certified eligible for a program.

(16) "Child" includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OHP program, child means an individual, including a minor parent, under the age of 19.

(d) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(17) "Community based care" is any of the following:

(a) Adult foster care - Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility - A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services - People living in their home receiving services determined necessary by the Department.

(d) Residential care facility - A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility - Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices - In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).

(18) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(19) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(20) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(21) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(22) "Department" means the Department of Human Services (DHS).

(23) "Dependent child", in the EXT, MAA, MAF, REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(24) "Disability" means:

(a) In the SNAP program, see OAR 461-001-0015.

(b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:

(A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

(25) "Domestic violence" means the occurrence of one or more of the following acts between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(26) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the

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facility serves other people, a portion must be used solely for victims of domestic violence.

(27) ELA means Express Lane Agency: A public agency identified in the State Medicaid Plan or State CHIP Plan as an agency capable of making determinations regarding one or more eligibility requirements in the OHP-OPC, OHP-CHP, or HKC programs.

(28) ELE means Express Lane Eligibility: In the HKC, OHP-CHP, and OHP-OPC programs, the Department's option to rely on a determination, made within a reasonable period, by an ELA finding that a child satisfies the requirements for OHP-CHP or OHP-OPC program eligibility. ELE qualifies a child for medical assistance benefits based on a finding from another public agency, even when the other agency's eligibility methodology differs from that ordinarily used by the Department to determine HKC, OHP-CHP, and OHP-OPC program eligibility.

(29) "Electronic application" is an application electronically signed and submitted through the internet.

(30) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(31) "Equity value" means fair market value minus encumbrances.

(32) "Fair market value" means the amount an item is worth on the open market.

(33) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

(34) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(35) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(36) "HPN" means a health plan new/noncategorical client eligible under OHP-OPU.

(37) "Income producing property" means any real or personal property that generates income for the financial group. Examples of income producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(38) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the SNAP program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the SNAP program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) In the OHP program, the first month of a redetermination or recertification period.

(e) For a new applicant to the GA, GAM, OSIP, or OSIPM program living in a nonstandard living arrangement, for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the client would have been eligible had it not been for the disqualifying transfer of assets.

(39) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(40) "Legally married" means a marriage uniting a man and a woman according to the provisions of either:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which the man and woman previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the man and woman previously resided while meeting the requirements for legal or cultural marriage in that country.

(41) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a life estate enables the owner of the life estate to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of his or her life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(42) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(43) "Long term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(44) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings, and personal injury claims.

(45) "Marriage" means the union of a man and a woman who are legally married.

(46) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(47) "Minor parent", in the ERDC, EXT, MAA, MAF, REF, REFM, and TANF programs, means a parent under the age of 18.

(48) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility in which the client receives long-term care services paid with Medicaid funding, except this subsection does not apply to a Medicare client in a skilled-stay nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community based care (see section (17) of this rule) setting, except a State Plan Personal Care (SPPC) setting is not considered a non-standard living arrangement.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, non-standard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care facility.

(C) Drug or alcohol residential treatment facility.

(D) Homeless or domestic violence shelter.

(E) Lodging house if paying for room and board.

(F) Correctional facility.

(G) Medical institution.

(49) "Ongoing month" means one of the following:

(a) For all programs except the OHP and SNAP programs, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the OHP and SNAP programs, any month in the certification period following the initial month of eligibility.

(50) "Parent" means the biological or legal (step or adoptive) mother or father of an individual or unborn child.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce, or death.



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(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent (the adoptive parent) has given up care, control, and supervision of the child.

(51) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(52) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(53) "Periodic income" means income received on a regular basis less often than monthly.

(54) "Primary person" for all programs except the SNAP program, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For the EXT, MAA, MAF, and TANF programs, the parent or caretaker relative.

(b) For the ERDC program, the caretaker.

(c) For SNAP, see OAR 461-001-0015.

(d) For the GA, GAM, OSIP, OSIPM, and QMB programs, the client or client's spouse.

(e) For the OHP, REF, and REFM programs, the applicant, caretaker, caretaker relative, or parent.

(55) "Qualified Partnership Policy" means a long term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

(a) Issued while the client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(56) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(57) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(58) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(59) "Shelter costs" mean, in all programs except the SNAP program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the SNAP program, see OAR 461-160-0420.

(60) "Shelter in kind" means an agency or person outside the financial group (see OAR 461-110-0530) provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs of the financial group. Shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.

(61) "Sibling" means the brother or sister of an individual. "Blood related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.

(62) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced spouse to a member of the financial group (see OAR 461-110-0530).

(63) "Spouse" means an individual who is legally married to another individual. In the ERDC and SNAP programs, spouse includes an individual who is not legally married to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors, or tradespeople; and

(b) Sharing living expenses or household duties.

(64) "Stable income" means income that is the same amount each time it is received.

(65) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(66) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(67) "Timely continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(68) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(69) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(70) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth: ORS 411.060, 411.070, 411.816, 412.006, 412.014, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.006, 412.014, 412.049, 414.042

Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; Administrative correction 4-21-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-025-0311

### Continuation of Benefits

(1) This rule explains who may receive continuing benefits until a final order is issued in a contested case.

(2) Except as provided otherwise in this rule, a client who is entitled to a continuing benefit decision notice under a rule in division 175 of this chapter of rules may, at the option of the client, receive continuing benefits, in the same manner and same amount, until a final order resolves the contested case. To be entitled to continuing benefits, the client must complete a hearing request not later than the later of:

(a) The tenth day following the date of the notice; and

(b) The effective date of the action proposed in the notice.

(3) The continuing benefits are subject to modification based on additional changes affecting the client's eligibility or level of benefits.

(4) In determining timeliness under section (2) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(5) In the ERDC program, if benefits are reduced or closed to reflect a mass change, continuing benefits are not available.

(6) In the REF and REFM programs, individuals are not entitled to continuing benefits when the issue in question is regarding the termination of benefits because the eligibility time period imposed by OAR 461-135-0900 has been reached.

Stat. Auth: ORS 409.010, 409.050, 411.060, 411.404, 411.408, 411.816, 412.014, 412.049

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.404, 411.408, 411.816, 412.014, 412.049

Hist.: AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 28-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-101-0010

### Program Acronyms and Overview

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program (for instance, OHP) and acronyms for each subprogram (for instance, OHP-CHP, OHP-OPC, OHP-OPP, OHP-OPU, and OHP-OP6).

(2) When no program acronym appears in a rule in Chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OHP means OHP-CHP, OHP-OPC, OHP-OPP, OHP-OPU, and OHP-OP6).

(4) BCCM; Breast and Cervical Cancer Medical program.

(5) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(6) CEC; Continuous Eligibility for OHP-CHP pregnant women. Title XXI medical assistance for a pregnant non-CAWEM child found eligible for the OHP-CHP program who, for a reason other than moving out of state or becoming a recipient of private major medical health insurance, otherwise would lose her eligibility. The pregnant individual is deemed eligible for OHP-CHP through the last day of the month in which the pregnancy ends.

(7) CEM; Continuous Eligibility for Medicaid. Title XIX medical assistance for a non-CAWEM child found eligible for Medicaid who loses his or her eligibility for a reason other than turning 19 years of age or mov-

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ing out of state. The child is deemed eligible for Medicaid for the remainder of the 12 month eligibility period.

(8) DSNAP; Disaster Supplemental Nutrition Assistance Program. Following a presidential declaration of a major disaster in Oregon, DSNAP provides emergency DSNAP program benefits to victims. OAR 461-135-0491 to 461-135-0497 cover DSNAP eligibility and benefits.

(9) EA; Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(10) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.

(11) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the MAA, MAF, or Pre-TANF program due to an increase in their child support or earned income.

(12) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(13) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(14) HKC; Healthy KidsConnect. A program administered by the Office of Private Health Partnerships (OPHP) providing access to health care for children not eligible for any of the Department's other medical assistance programs. The Department determines eligibility and OPHP manages enrollment.

(15) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(16) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(17) JOBS Plus. Provides subsidized jobs rather than SNAP or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for SNAP clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, SNAP clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) TANF-PLS; Clients eligible for JOBS Plus based on TANF.

(b) SNAP-PLS; Clients eligible for JOBS Plus based on SNAP.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(18) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(19) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Pre-TANF program or ongoing TANF benefits.

(20) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(21) OFSET. The Oregon Food Stamp Employment Transition Program, which helps SNAP program benefit recipients find employment. This program is mandatory for some SNAP program benefit recipients.

(22) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-CHP; Persons Under 19. OHP coverage for persons under 19 years of age who qualify under the 201 percent income standard.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(d) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(e) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(23) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program - Old Age Assistance.

(24) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(25) The Post-TANF program provides a monthly transitional payment to employed clients who are no longer eligible for the Pre-TANF or TANF programs due to earnings, and meet the other eligibility requirements.

(26) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to assess the individual's employment potential; determine any barriers to employment or family stability; develop an individualized case plan that promotes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.

(27) QMB; Qualified Medicare Beneficiaries. Programs providing payment of Medicare premiums and one program also providing additional medical coverage for Medicare recipients. Each of these programs also is considered to be a Medicare Savings Program (MSP). When used alone in a rule, QMB refers to all MSP. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries - Specified Limited Medicare Beneficiary. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(d) QMB-SMF; Qualified Medicare Beneficiaries — Qualified Individuals. Payment of the Medicare Part B premium only. There are no medical benefits available through QMB-SMF. This program has a 100-percent federal match, but also has an allocation that, if reached, results in the closure of the program.

(28) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(29) REFM; Refugee Assistance Medical. Medical coverage for low-income refugees.

(30) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(31) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(32) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

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(33) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(34) SNAP; Supplemental Nutrition Assistance Program. Helps low-income households maintain proper nutrition by giving them the means to purchase food. SNAP used to be known as FS or Food Stamps, any reference to SNAP also includes FS and Food Stamps.

(35) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(36) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment.

Stat. Auth.: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-110-0630 Need Group

(1) The need group consists of the individuals whose basic and special needs are used in determining eligibility and benefit level.

(2) In the EA, REF, and REFM programs, the need group consists of the members of the financial group (see OAR 461-110-0530) who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(3) In the ERDC, OSIP-EPD, OSIPM-EPD, QMB, and SAC programs, the need group consists of each member of the *financial group*.

(4) In the EXT program, the need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.

(5) In the SNAP program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements, except the following people are not in the *need group*:

(a) A member disqualified for an intentional program violation.

(b) A fleeing felon under OAR 461-135-0560.

(c) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(6) In the GA and GAM programs, the need group consists of each member of the financial group except that the following individuals may not be in the need group:

(a) A fleeing felon under OAR 461-135-0560.

(b) An individual in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(c) An individual not complying with social security number requirements under OAR 461-120-0210.

(7) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in subsection (b) of this section, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705.

(b) The need group cannot include:

(A) A parent who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

(C) In the TANF program:

(i) An individual who cannot be in the need group because of a disqualification penalty.

(ii) An individual who cannot be in the need group because the individual has exceeded the 60-month time limit and does not meet any of the exceptions listed in OAR 461-135-0075.

(iii) A fleeing felon under OAR 461-135-0560.

(iv) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(8) In the MAF program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizen and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705, except for the following individuals:

(a) A parent who is in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(9) In the HKC and OHP programs:

(a) An unborn child of a pregnant female is included in the need group.

(b) Except as provided in OAR 461-150-0055(5), the need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.

(10) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs:

(a) If a child is applying, the need group consists of the child.

(b) In all other situations, the need group consists of each member of the *financial group*.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-115-0071

### Who Must Sign the Application and Complete the Application Process

(1) In the ERDC, HKC, MAA, MAF, OHP, REF, REFM, and TANF programs, the following individuals must sign the application and complete the application process:

(a) In the MAA, MAF, REF, REFM, and TANF programs, at least one caretaker relative (see OAR 461-001-0000).

(b) In the HKC and OHP programs:

(A) When there is a parent (see OAR 461-001-0000) in the household group (see OAR 461-110-0210), one parent.

(B) When there is no parent in the household group, the primary person (see OAR 461-001-0000).

(c) In the ERDC program, a caretaker (see OAR 461-001-0000).

(2) In the EA program:

(a) A caretaker relative must sign the application and complete the application process for a child (see OAR 461-001-0000). If the child is not living with a caretaker relative, another adult may act on behalf of the child.

(b) If the caretaker relative lives with a spouse (see OAR 461-001-0000), both must sign the application.

(c) A dependent child 18 years of age who applies must sign the application and complete the application process.

(3) In the GA, GAM, and QMB programs, an adult requesting assistance and the adult's spouse, if they live together, must complete the application process and sign the application.

(4) In the OSIP and OSIPM programs, an adult requesting assistance and the adult's spouse, if they live together, must sign the application and complete the application process, if able. If the client and the spouse are unable to sign the application and complete the application process, this can be done by the authorized representative (see 461-115-0090). If the appli-



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cant dies prior to the determination of eligibility for OSIPM, the application may be processed if the Department receives the required verification.

(5) In the SNAP program, the primary person, the spouse of the primary person, or another adult member of the filing group (see OAR 461-110-0370) must sign the application and complete the application process.

(6) An individual required to sign the application but unable to sign may sign with a mark, witnessed by an employee of the field office.

Stat. Auth.: ORS 411.060, 411.070, 411.081, 411.087, 411.400, 411.404, 411.431, 411.432, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.087, 411.400, 411.404, 411.431, 411.432, 411.816 & 412.049

Hist.: SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 23-2010(Temp), f. & cert. ef. 7-15-10 thru 1-11-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-120-0210

### Requirement to Provide or Apply for SSN

(1) In the CAWEM, ERDC, REF, and REFM programs, a member of a *need group* (see OAR 461-110-0630) or a benefit group (see OAR 461-110-0750) is not required to provide or apply for a social security number (SSN). In these programs, the Department may request that a member of the filing group or need group provide an SSN on a voluntary basis.

(2) In the EA and TA-DVS programs, an individual must provide his or her SSN if the individual can.

(3) Except as provided in section (5) of this rule, in the OSIP, OSIPM, and QMB programs, to be included in the *benefit group*, an individual must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have a valid one and provide the SSN when it is received.

(4) Except as provided in sections (5) to (7) of this rule, in all programs not covered by sections (1) to (3) of this rule, to be included in the need group, an individual (other than an unborn) must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have one and provide the SSN when it is received.

(5) In the BCCM, CEC, CEM, EXT, GA, GAM, HKC, MAA, MAF, OHP, OSIP, OSIPM, QMB, SAC, and SNAP programs, an individual is not required to apply for or provide an SSN if the individual is:

(a) A member of religious sect or division of a religious sect that has continuously existed since December 31, 1950; and

(b) Adheres to its tenets or teachings that prohibit applying for or using an SSN.

(6) The requirement to apply for or provide the SSN is delayed as follows:

(a) In the BCCM, CEC, CEM, EXT, MAA, MAF, OHP, and SAC programs, a newborn who is assumed eligible based on the eligibility of the mother of the newborn may receive benefits until one year of age without meeting the SSN requirements of section (4) of this rule.

(b) In the SNAP program:

(A) An applicant eligible for expedited services may receive his or her first full month's allotment without meeting the SSN requirement but must meet the requirement before receiving a second full month's allotment.

(B) Before applying for or providing an SSN, a newborn may be added to an existing *benefit group* (see OAR 461-110-0750) for six months following the date the child is born or until the group's next recertification, whichever is later.

(c) In the TANF program, without meeting the SSN requirements of section (4) of this rule, a newborn child born in Oregon may be added to the benefit group for six months following the child's date of birth or until the next redetermination of eligibility of the filing group (see OAR 461-110-0330), whichever is sooner.

(7) In the SNAP program:

(a) An individual who refuses or fails without good cause to provide or apply for an SSN when required by this rule is ineligible to participate. This period of ineligibility continues until the individual provides the SSN to the Department.

(b) An individual may participate in SNAP for one month in addition to the month of application, if the individual can show good cause why the application for an SSN has not been completed. To continue to participate, the individual must continue to show good cause each month until the application for an SSN is complete with Social Security Administration.

(c) An individual meets the good cause requirement in subsections (a) and (b) of this section if the individual provides evidence or collateral information that the individual applied for or made every effort to supply the Social Security Administration with the necessary information to complete the application process. Delays due to illness not associated with a disability

(see OAR 461-001-0015), lack of transportation, or temporary absence do not qualify as good cause under this rule.

(8) This rule authorizes or requires the collection of an SSN for each of the following purposes.

(a) The determination of eligibility for benefits. The SSN is used to verify income and other assets, and match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, child support, Social Security benefits, and unemployment benefits.

(b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits.

(c) The operation of the program applied for or providing benefits.

(d) Conducting quality assessment and improvement activities.

(e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-130-0305

### General Provisions; Employment Programs

(1) This division of rules states:

(a) The requirements for a client participating in the employment programs of the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs. The employment programs are the JOBS, OFSET, and REF (administered under division 193 of these rules) employment programs.

(b) The effect of a labor strike on a client's eligibility for program benefits.

(2) The following definitions apply to OAR 461-130-0305 through 461-130-0335:

(a) "Exempt" means a client who the Department determines is not mandatory for an employment program in accordance with OAR 461-130-0310.

(b) "Mandatory" means a client in the need group (see OAR 461-110-0630) who the Department determines must participate in an employment program in accordance with OAR 461-130-0310.

(c) "Volunteer" means a client who is not a mandatory client and chooses to participate in an employment program.

(3) A client must provide the information necessary for the Department to determine each of the following:

(a) The client's participation classification (see OAR 461-130-0310);

(b) The client's level of participation; and

(c) If applicable, whether a client had good cause (see OAR 461-130-0327) for any failure to meet a requirement of an employment program.

(4) In the SNAP program, a mandatory client (see OAR 461-130-0310(3)(b)) is registered for the employment program when a member of the filing group (see OAR 461-110-0370) or an authorized representative (see OAR 461-115-0090 and 461-115-0140) signs the SNAP program application.

Stat. Auth.: ORS 411.060, 411.816, 412.006, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.006, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-130-0310

### Participation Classifications: Exempt, Mandatory, and Volunteer

(1) In the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs:

(a) The Department assigns a client to one or more employment program participation classifications — *exempt*, *mandatory*, and *volunteer* (see OAR 461-130-0305 for definitions of all three terms).

(b) In the Post-TANF program, a client is classified as a volunteer.

(2) In the Pre-TANF, REF, and TANF programs:

(a) A client is exempt from employment program participation and disqualification if the client meets the requirements of at least one of the following paragraphs. The client is:

(A) Pregnant and in the month before the month in which the due date of the pregnancy falls.

(B) A parent (see OAR 461-001-0000) during the first six months after the birth of the parent's dependent child (see OAR 461-001-0000)

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except that the Department may require the parent to participate in parenting classes or a family stability activity (see OAR 461-001-0000). An exemption allowed under this paragraph may apply only to one mandatory participant in each filing group.

(C) Under 20 years of age during the first 16 weeks after giving birth except that the client may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activity.

(D) A parent providing care for a family member who is an individual with a disability (see OAR 461-001-0000) and is in the household group (see OAR 461-110-0210) with the parent.

(E) An REF client 65 years of age or older.

(F) A TANF client 60 years of age or older.

(G) A noncitizen who is not authorized to work in the United States.

(H) An individual who is eligible for and receives supplemental security income (SSI) from the Social Security Administration.

(I) A caretaker relative (see OAR 461-001-0000) who is non-needy.

(J) A client whose participation is likely to cause undue hardship or is contrary to the best interests of the dependent child or needy caretaker relative.

(K) A pregnant client who participates more than 10 hours per week during the two months before the month in which the pregnancy due date falls.

(L) A VISTA volunteer.

(b) A parent of a dependent child who receives REF or TANF program benefits is mandatory if the parent is in the same filing group (see OAR 461-110-0330) with the dependent child (even if the parent is not in the REF or TANF program benefit group under OAR 461-110-0750), unless the parent is otherwise exempt from participation under subsection (a) of this section.

(3) In the SNAP program:

(a) A client is exempt from employment program participation and disqualification if the client meets the requirements of one of the following paragraphs. The client is --

(A) Working a minimum of 30 hours a week or earning money equal to at least the federal minimum wage multiplied by 30 hours per week multiplied by 4.3 weeks. A self-employed client with allowable costs must meet the earnings threshold after allowing the 50 percent deduction. This includes migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.

(B) An individual with a physical or mental condition that prevents performance of any work.

(C) Responsible for the care of a child in the household under 6 years of age or an individual in the household with a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(D) Providing care for at least 30 hours a week for an individual in another household with a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(E) Enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. Clients remain exempt during normal periods of class attendance, vacation and recess but no longer qualify for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion or when the student drops out of school or does not enroll in classes for the next regular school term (excluding summer term).

(F) Receiving REF or TANF program benefits, while a mandatory participant in the JOBS or NAES programs.

(G) In receipt of unemployment insurance benefits or has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim.

(H) Participating in a drug or alcohol treatment and rehabilitation program.

(I) Pregnant.

(J) Lacking adequate dependent care.

(K) Without adequate transportation available.

(L) Experiencing a barrier to employment, such as being homeless or having a short-term physical or mental limitation or a serious family problem.

(b) A mandatory client is an individual in the need group (see OAR 461-110-0630); who is 16 or 17 years of age and a primary person (see

OAR 461-001-0015), or 18 years of age and older and 59 years of age and younger; and who is not exempt under subsection (a) of this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.660, 411.710, 411.816, 412.006, 412.009, 412.014, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.660, 411.710, 411.816, 412.006, 412.009, 412.014, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

### 461-130-0315

#### Requirements for Mandatory Employment Program Clients; Pre-TANF, REF, SNAP, TANF

The following provisions apply to a *mandatory* (see OAR 461-130-0305) client:

(1) A *mandatory* client selected by the Department to participate in an employment program of the Pre-TANF, REF, SNAP, or TANF program must do all of the following:

(a) Accept a bona fide offer of employment, whether temporary, permanent, full time, part time, or seasonal.

(b) Maintain employment.

(A) In the Pre-TANF, REF, and TANF programs, in accordance with OAR 461-135-0070, a client fails to maintain employment when the client:

(i) Voluntarily quits work without good cause (see OAR 461-135-0327);

(ii) Is discharged for misconduct (see OAR 461-135-0070), felony or theft; or

(iii) Voluntarily reduces earnings or does not accept an increase in hours that would result in an increase of earnings without good cause.

(B) In the SNAP program:

(i) A client meeting the requirements of subparagraph (iii) of this paragraph fails to maintain employment when the criteria in at least one of the following sub-subparagraphs is met:

(I) Voluntarily leaving a job 30 days or less prior to the date of application for SNAP benefits or at any time thereafter;

(II) Being dismissed for striking while a federal, state, or county employee; or

(III) Reducing hours of work to less than 30 each week.

(ii) The following changes in employment status do not constitute a client's failure to maintain employment:

(I) An employer reduces a client's hours of work;

(II) An employer fires a client from a job;

(III) A client terminates a self employment enterprise; and

(IV) A client resigns from a job at the demand of the employer.

(iii) Subparagraph (i) of this paragraph applies only if the client meets at least one of the following requirements. The client --

(I) Is required to register for work;

(II) Is exempt from participating in the employment program due to employment under OAR 461 130 0310(3)(a)(A);

(III) Had a job that averaged not less than 30 hours each week or had provided average weekly earnings not less than the federal minimum wage multiplied by 30 hours, and the client quit the job; or

(IV) Quits working under a JOBS Plus agreement more than twice (see OAR 461 190 0426).

(c) Schedule and keep required employment-related appointments and interviews.

(d) Notify the Department's case manager or the JOBS contractor of the reason for not keeping employment-related appointments and interviews, not attending scheduled classes and activities, or not completing case management activities. Notification must be made within three working days from the date of a missed appointment, interview, class, or activity.

(e) Provide the Department, in the manner the Department requires, with verifiable documentation of JOBS participation hours, including paid work, job search, and educational participation hours.

(f) In the SNAP program, complete all work activities and components specified on the case plan (see OAR 461-001-0020).

(g) In the REF and TANF programs, complete all activities (see OAR 461-001-0025) specified on the case plan (see OAR 461-001-0025).

(2) In the Pre-TANF, REF, and TANF programs a mandatory client who fails to meet a participation requirement without good cause (see OAR 461-130-0327) is subject to disqualification in accordance with OAR 461-130-0330 only after the re-engagement process under OAR 461-190-0231 has been completed.

Stat. Auth.: ORS 411.060, 418.045, 412.049

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Stats. Implemented: ORS 411.060, 418.045, 412.049  
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-130-0327

### Good Cause; Employment Programs

In a Department employment program administered under these rules (OAR 461-130-0305 to 461-130-0335):

(1) The Department does not require a client to provide verification of good cause if providing the verification would expose the client to increased risk of *domestic violence* (see OAR 461-001-0000).

(2) If in making a determination under this rule a client's physical or mental impairment is in question, the Department may require the client to provide documentation from a qualified and appropriate medical professional.

(3) A client is excused for good cause from a failure to comply with a requirement of an employment program, including an activity in a case plan (both terms defined in OAR 461-001-0025) in the following circumstances:

(a) Participation in a required activity in a case plan would have an adverse effect on or risk to the client's physical or mental health or would expose the client to increased risk of *domestic violence* (see OAR 461-001-0000).

(b) Except in the SNAP program, participation is likely to cause undue hardship for the dependent child (see OAR 461-001-0000) or the client.

(c) Appropriate child care, or day care for an individual in the household who has a disability (see OAR 461-001-0000 and 461-001-0015 as applicable) that substantially reduces or eliminates the individual's ability to care for himself or herself, cannot be obtained. "Appropriate child care" means that:

(A) Both the provider and the place where care is provided meet health, safety, and provider requirements as required in OAR 461-165-0180;

(B) The care accommodates the parent's work schedule; and

(C) The care meets the specific needs of the dependent child, such as age and special-needs requirements.

(d) The work attachment position or employment offered is vacant due to a strike, lockout, or other labor dispute.

(e) The work attachment position or employment requires the client to join a union, and the client has religious objections to unions.

(f) The client belongs to a union and the employment violates the conditions of the client's membership in the union.

(g) The wage for the client's current or potential job is:

(A) Less than applicable minimum wage; or

(B) If minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(h) The client's prospective employer engages in employment practices that are illegally discriminatory on the basis of age, sex, race, religious or political belief, marital status, disability, sexual orientation, or ethnic origin.

(i) The client's participation in a required activity in a case plan would prevent or interfere with the client's participation in an activity of the Grande Ronde Tribe's NEW program.

(j) The client's failure to participate is due to a circumstance beyond his or her reasonable control.

(k) When the failure to comply is caused by an aspect of the client's disability, including the Department's failure to provide a reasonable accommodation.

(l) The client quits a job to accept another job with a monthly income at least equal to the monthly income of the first job.

(4) In the SNAP program, a client is excused from not accepting employment or for leaving a job under the following circumstances:

(a) The hours or nature of the job interferes with the client's religious observances, convictions, or beliefs.

(b) The client accepts employment or enrolls at least half-time in any recognized school, training program, or institution of higher education that requires the client to quit a job.

(c) A client accepts employment or enrolls in school in another county, requiring the benefit group to move and the client to quit a job.

(d) A client less than 60 years of age resigns, and the employer recognizes the resignation as retirement.

(e) The client leaves a job to follow a type of employment that moves from one area to another, such as migrant labor or construction.

(f) The client accepts a job that, for reasons beyond the control of the client, does not materialize or results in fewer work hours or a lower wage than the client's previous job.

(g) Work demands or conditions, such as not being paid for work or not being paid on schedule, make employment unreasonable.

(h) The wage for the client's current or potential job is less than applicable minimum wage or, if minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(i) The work schedule for the job in question does not conform to hours customary to the occupation or the hours worked each week are more than those customary to the occupation.

(j) The client is not obligated to accept a job during the first 30 days of registration for employment if the job is not in the client's field of experience.

(k) The client has no means of transportation and would have to walk an unreasonable distance to meet the participation requirement. An "unreasonable distance" is a distance that requires a commute of more than two hours each day. The client must make a good-faith effort to secure the needed transportation.

(l) Lack of adequate child care for a child who is six years of age or older and less than 12 years of age.

Stat. Auth.: ORS 411.060, 411.816, 412.006, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.117, 411.816, 412.006, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-130-0328

### Effect of Strikes

(1) For the purposes of this rule, "striker" means anyone participating in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) or any concerted slowdown or other concerted interruption of operations by employees. An individual is not a striker if the individual is:

(a) An employee affected by a lockout;

(b) An individual who goes on strike but who is *exempt* (see OAR 461-130-0305) from participating in an employment program under this division of rules the day prior to the strike, unless exempt solely on the ground that the individual is employed; or

(c) A client who is not part of a bargaining unit on strike and does not want to cross a picket line due to fear of personal injury or death.

(2) In the EA, EXT, MAA, MAF, REF, and TANF programs, a filing group is ineligible for program benefits during any month in which a *parent* (see OAR 461-001-0000) in the filing group is a striker. If any other member of the filing group is a striker, only that individual is ineligible.

(3) In the SNAP program:

(a) A household containing a striker is not eligible to participate in the program unless the household was eligible for benefits the day prior to the date the member became a striker.

(b) An eligible household is not entitled to an increased allotment as the result of a decrease in the income of a need group (see OAR 461-110-0630) member on strike.

(c) The eligibility of a *filing group* (see OAR 461-110-0370) containing a striker is determined by adding to the income of the group's members who are not strikers the greater of the striker's current income or the striker's income immediately before the strike. Deductions used to determine benefits and eligibility for a household subject to the net income eligibility standard are calculated for the month of application as for any other household.

(d) A striker is subject to the registration requirements of this division of rules unless exempt from participating in an employment program on the day of application.

Stat. Auth.: ORS 411.060, 411.404, 411.816

Stats. Implemented: ORS 411.060, 411.404, 411.816

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-130-0330

### Disqualifications; Post-TANF, Pre-TANF, REF, SNAP, TANF

(1) In the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs, the Department may not disqualify from program benefits a client who is a *volunteer* (see OAR 461-130-0305) participant in an employment program.

(2) In the Pre-TANF, REF, and TANF programs, a *mandatory* (see OAR 461-130-0305) client who fails to comply with an employment program participation requirement and does not have good cause (see OAR 461-130-0327) for the failure to comply is subject to disqualification under



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this rule only after the requirements of all of the following subsections are met:

(a) The client has had the opportunity to participate in the re-engagement process under OAR 461-190-0231;

(b) The Department has determined the client is willfully non-compliant and does not have good cause for failing to comply with a requirement of the program;

(c) The Department has offered (and the client has refused) or conducted screenings (and assessed if appropriate) for physical or mental health needs, substance abuse, domestic violence, and learning needs;

(d) The Department has determined the client has no barriers (see OAR 461-001-0025) or refuses to take appropriate steps to address identified barriers;

(e) The Department has determined the client has not met federally required participation rates (see OAR 461-001-0025); and

(f) The Department has assessed for any risk of harm posed to the children by a reduction in cash assistance.

(3) The effects of a JOBS disqualification are progressive. There are four levels of disqualification and one month of disqualification for each level. Once a disqualification is imposed, it affects benefits according to the following schedule until the disqualification ends in accordance with OAR 461-130-0335:

(a) At the first through third levels, the penalty is removal of the disqualified client from the need group (see OAR 461-110-0630).

(b) At the fourth level, the need group receives no cash benefit in the TANF program.

(4) In the SNAP program:

(a) A mandatory client who fails to comply with the requirements of an employment program is subject to disqualification. A disqualified client is removed from the need group until he or she meets the employment program requirements and serves the applicable progressive disqualification under the following subsections:

(A) One calendar month for the first failure to comply.

(B) Three calendar months for the second failure to comply.

(C) Six calendar months for the third and subsequent failures to comply.

(b) A client who is exempt (see OAR 461-130-0305) from participation in the SNAP employment program because he or she is a mandatory participant in the JOBS program, receiving unemployment compensation benefits, or has applied for unemployment compensation benefits and is waiting on an initial decision must comply with the requirements of those programs. If the client fails to comply with the requirements of the applicable program the client is disqualified from receiving SNAP benefits, unless he or she can show good cause under OAR 461-130-0327.

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-130-0335

### Removing Disqualifications and Effect on Benefits

(1) An applicant who would be subject to an employment program disqualification under OAR 461-130-0330 but withdraws the application before benefits are approved is not subject to disqualification.

(2) In the SNAP and TANF programs, a filing group (see OAR 461-110-0330 and 461-110-0370) is not subject to the impact of a disqualification for a disqualified member who has left the household. Should the member join another *filing group*, that group is subject to the member's most recent disqualification.

(3) In the SNAP program, the disqualification ends the first day of the month following the month in which information is provided to the Department justifying the change in the client's participation classification, even if the date falls within the disqualification period provided in OAR 461-130-0330(4).

(4) In the REF and TANF programs, a client disqualified for failure to meet the requirements of an employment program under division 190 of these rules must cooperate for two consecutive weeks with each activity (see OAR 461-001-0025) specified in the client's current or revised case plan (see OAR 461-001-0025) before the Department may remove the disqualification. Cash benefits are restored effective the date the client completes the two consecutive week cooperation period.

(5) In the REF and TANF programs, a disqualification ends when the Department changes the participation classification of the disqualified individual to *exempt* (see OAR 461-130-0305) or when the client complies with the requirements of the employment program (see section (4) of this rule).

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.009, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-135-0010

### Assumed Eligibility for Medical Programs

(1) This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.

(2) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for the EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(3) A pregnant woman who was eligible for and receiving medical assistance under any Medicaid program and becomes ineligible while pregnant is assumed eligible for Medicaid until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(4) A *child* (see OAR 461-001-0000) born to a mother eligible for and receiving EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC benefits is assumed eligible for medical benefits under this section until the end of the month the child turns one year of age.

(5) The following children are assumed eligible for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) A child in a state subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(6) The individuals described in subsection (a) and (b) of this section are assumed eligible for OSIPM (except OSIPM-EPD) unless subsection (c) or (d) of this section applies:

(a) A recipient of SSI benefits.

(b) An individual deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).

(d) An individual described in subsection (a) or (b) of the section who is in a nonstandard living arrangement is not assumed eligible for long-term care services if countable resources exceed the limit after performing the calculation under OAR 461-160-0580.

(7) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB BAS program.

(8) A client is assumed eligible for the REFM program if:

(a) The client is receiving cash assistance through the REF program;

(b) The client loses eligibility for cash assistance through the REF program only because of income or resources;

(c) The client loses eligibility for the EXT, MAA, MAF, or SAC programs, but still meets the requirements of the REFM program; or

(d) The client had refugee-related medical assistance established in another state based on refugee status granted by the United States Citizenship and Immigration Services, and moved to Oregon within the client's first eight months in the United States.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 412.049, 414.025

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; 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 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

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## 461-135-0210

### TANF Cooperation Incentive Payment

(1) Except as provided in section (3) of this rule, a TANF client or caretaker relative (see OAR 461-001-0000) of a TANF client who volunteers to comply, and continues to comply, with a case plan in the JOBS program (see OAR 461-001-0025) may volunteer to receive an incentive payment. The incentive payment is made to clients in the JOBS program to motivate and recognize their progress toward employment and self-sufficiency. The incentive payment, in the amount authorized by OAR 461 155 0035, is added to the client's cash grant if the client meets the requirements of this rule and volunteers to receive the payment.

(2) A TANF client or *caretaker relative* of a TANF client may not receive the incentive payment if the client's grant is reduced because of an intentional program violation (see OAR 461-195-0611), a failure to comply with a requirement of the Child Support program (see OAR 461-120-0340), or a failure to comply with any other requirement of the TANF program.

(3) All Cooperation Incentive payments end on September 30, 2010. Beginning October 1, 2010, no client in the TANF program will receive a Cooperation Incentive Payment.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049  
Stats. Implemented: ORS 409.050, 411.060, 411.070, 412.006, 412.049  
Hist.: AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 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 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 30 days or more 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) An applicant selected from the Child Care Reservation List must then submit an application for child care benefits to the Department. The applicant has 30 days from the date on the selection letter sent by the Department for the Department to receive the application for child care benefits. If an applicant does not apply within the 30 days, 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 30 days or more; 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 409.050, 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

## 461-135-0780

### Eligibility for Pickle Amendment Clients; OSIPM

(1) An individual is eligible for OSIPM under this rule and the so-called Pickle amendment (Pub. L. No. 94 566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving Social Security Benefits (SSB);

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the individual was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the individual when he or she became ineligible for SSI or OSIPM is used as the individual's countable Social Security income, for the purposes of the Pickle Amendment. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the individual was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the individual's Social Security benefits by the applicable percentage. This amount, rounded down to the next lower whole dollar, is the individual's countable Social Security for purposes of this rule and the Pickle Amendment. Add that figure to any other countable unearned income plus adjusted earned income of the individual, and if the total is less than the full SSI income standard for a single individual plus the \$20 unearned income deduction (OAR 461-160-0550), the individual is eligible for OSIPM for purposes of this rule and the Pickle amendment. For spouses in the same financial group (see OAR 461-110-0530), perform the above calculation for each spouse, combine the results and add the subtotal to all other countable unearned and adjusted earned income. If the total is less than the full SSI standard for a couple plus the \$20 unearned income deduction (OAR 461-160-0550), the couple is eligible for OSIPM for purposes of this rule and the Pickle amendment. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Calculations not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.404  
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995,

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f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 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 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-135-1100

### Specific Requirements; OHP

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule, OAR 461-135-1101, and 461-135-1149, the term private major medical health insurance refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than \$10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program or Kaiser Transition Program.

(2) To be eligible for the OHP program, an individual cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be eligible for Medicare, except that this requirement does not apply to the OHP OPP program;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, an individual must be 19 years of age or older and may not be pregnant. An individual eligible for the OHP-OPU program is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP program eligibility requirements, an HPN client:

(a) May not be covered by private major medical health insurance and may not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) The individual has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The individual's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The individual's private health insurance was subsidized through FHIAP or the Office of Private Health Partnerships (OPHP) in accordance with ORS 414.231, 414.826, 414.831, and 414.839; or

(D) A member of the individual's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461 135 1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120.

(D) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(4) To be eligible for the OHP-OPC program, an individual must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, an individual must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, an individual must be under 19 years of age and must:

(a) Not be eligible for the OHP-OPC, OHP-OPP, or OHP-OP6 programs;

(b) Meet budgeting requirements of OAR 461-160-0700;

(c) For eligibility decisions prior to August 16, 2010, select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(d) Not be covered by private major medical health insurance or by any private major medical health insurance during the preceding two months. The two-month waiting period is waived if:

(A) The individual has a condition that, without treatment, would be life threatening or cause permanent loss of function or disability;

(B) The loss of health insurance was due to the loss of or a change in employment;

(C) The individual's private health insurance premium was reimbursed under OAR 461 135 0990;

(D) The individual's private health insurance was subsidized through FHIAP or the Office of Private Health Partnerships (OPHP) in accordance with ORS 414.231, 414.826, 414.831, and 414.839; or

(E) A member of the individual's filing group was a victim of domestic violence.

(8) A child who becomes ineligible for the OHP program because of age while receiving in patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in patient medical services on the last day of the month in which the age requirement is no longer met.

(9) In the HKC, OHP-CHP, and OHP-OPC programs, for the Department to enroll a child in the program based on a determination made by an ELA, the child's parent or guardian must give consent in writing, by telephone, orally, or through electronic signature for the child to be enrolled in the program.

(10) The Department only may use ELE for a child in a filing group in which no member is already receiving benefits through the CEC, CEM, EXT, HKC, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OP6, OSIPM, or SAC program.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 414.231

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 36-2009(Temp), f. & cert. ef. 12-1-09 thru 12-31-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 9-2010(Temp), f. & cert. ef. 4-21-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 21-2010(Temp), f. & cert. ef. 7-1-10 thru 10-18-10; SSP 24-2010(Temp), f. & cert. ef. 7-15-10 thru 10-18-10; SSP 27-2010(Temp), f. & cert. ef. 8-16-10 thru 10-18-10; SSP 30-2010(Temp), f. & cert. ef. 8-25-10 thru 10-18-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 35-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-135-1125

### Reservation Lists and Eligibility; OHP-OPU

In the OHP program:

(1) "OHP Standard Reservation List" means the list of individuals who may be considered for the OHP-OPU program as a new applicant at such times as the Department determines that new applicants may be added into the program. This list is used to manage enrollment of new applicants as defined by OAR 461-135-1102 into the program within the limits of program authority and funding.

(2) "OHP Standard Reservation List Applicant" means an individual who has been selected randomly under section (6) of this rule and establishes a *date of request* (see OAR 461-115-0030) on or after the date of the random selection and within 45 days from the date the Department mails the OHP 7210R Application form as a result of the random selection.

(3) When the Department specifies that the *OHP Standard Reservation List* is open, an individual is placed on the OHP Standard Reservation List if all of the following requirements are met:

(a) The individual, or someone acting on behalf of the individual, may request placement on the OHP Standard Reservation List by calling the designated telephone number for the *OHP Standard Reservation List* or in writing. A written request must arrive through one of the following methods:

(A) By mail to the designated mailing address for the OHP Standard Reservation List.

(B) By fax or hand delivery to a local Department office that receives client applications for the Oregon Health Plan.

(C) By electronic submission from the OHP website or by e-mail to the OHP Standard Reservation List e-mail address.

(b) The full name, date of birth, and mailing address of each individual requesting placement on the OHP Standard Reservation List must be provided to the Department and received by the Department as described in subsection (a) of this section before the request is considered complete.

(c) If the address of an individual changes after the individual makes a request, the individual must provide an updated address to the Department using a method described in subsection (a) of this section. If the individual reports an address change to the Department in a way other than that outlined in subsection (a) of this section, the Department cannot guarantee the



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address change will be reflected in the reservation list, but will make reasonable efforts to incorporate that address change.

(4) The following procedures apply to the OHP Standard Reservation List:

(a) Individuals completing a request for placement on the OHP Standard Reservation List are assigned a reservation number. All members of an OHP filing group (see OAR 461-110-0400 for filing group composition) requesting placement on the OHP Standard Reservation List are assigned the same reservation number.

(b) The Department may request that individuals voluntarily provide their social security number (prior to the OHP 7210R Application). The Department may use the social security number for purposes of identification to help prevent duplicate reservations. The Department may not deny placement on the OHP Standard Reservation List because an individual does not provide a social security number.

(c) The Department sends confirmation to individuals who are placed on the OHP Standard Reservation List. If there is already a reservation established, individuals who have received confirmation from the Department need not make an additional request unless the reservation was removed (see section (8) of this rule), already used, or withdrawn.

(5) Requesting placement on the OHP Standard Reservation List, receiving a reservation number, or being placed on the OHP Standard Reservation List does not constitute an application for the OHP-OPU program or any other medical program administered by the Department. The Department must send an individual an application for medical assistance when the individual requests and is placed on the OHP Standard Reservation List, must review each application received for eligibility under all medical assistance programs, and must send a decision notice (see OAR 461-001-0000) for each application received (to the extent required under OAR 461-115-0010(6)). However, a new applicant as defined in OAR 461-135-1102 for the OHP-OPU program is managed by the OHP Standard Reservation List.

(6) At such times that the Department determines that it has the requisite authority and funding and that new applicants can be added to the OHP-OPU program, and after the Department determines the number of new applicants that can be added, a designated number of individuals on the OHP Standard Reservation List are selected randomly and mailed OHP 7210R Application forms. Once an individual has been selected randomly, the reservation number assigned to that individual and its position on the list has been used and is no longer available.

(7) An OHP Standard Reservation List Applicant must file a Department application or amend a completed application (see OAR 461-115-0050) as a prerequisite of receiving OHP-OPU program benefits.

(8) When the Department determines that the OHP Standard Reservation List should be discontinued, all individuals currently on the list are removed except as provided in section (9) of this rule. If the Department establishes a new OHP Standard Reservation List, the Department determines when an individual may again request placement on the list according to sections (3) and (4) of this rule.

(9) The Department may opt to use the reservation number of an individual not selected randomly from a discontinued list to create a new OHP Standard Reservation List. To be added to the new OHP Standard Reservation List, the Department may require each individual not selected randomly from the discontinued OHP Standard Reservation List to request placement on the new OHP Standard Reservation List and be assigned a new reservation number.

(10) Nothing in this rule prevents any individual from applying for medical assistance at any time. However, new applicants as defined in OAR 461-135-1102 for the OHP-OPU program are managed by the OHP Standard Reservation List.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 414.706

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.404, 414.025, 414.706

Hist.: SSP 2-2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 12-2008(Temp), f. & cert. ef. 4-17-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 22-2009(Temp), f. & cert. ef. 8-28-09 thru 2-21-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 10-2010(Temp), f. & cert. ef. 4-21-10 thru 10-18-10; SSP 28-2010(Temp), f. & cert. ef. 8-16-10 thru 10-18-10; SSP 28-2010(Temp), f. & cert. ef. 8-16-10 thru 10-18-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 35-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-135-1195

### Specific Requirements; SFPSS Eligibility

In the SFPSS program:

(1) To be eligible, a client must meet the following requirements:

(a) Be an adult;

(b) Meet all TANF program eligibility requirements (except as provided otherwise in this rule);

(c) Be receiving TANF benefits;

(d) Have an impairment that meets the requirements in OAR 461-125-0260;

(e) File an application for Supplemental Security Income (SSI) disability benefits under the Social Security Act; and

(f) Sign an Interim Assistance Authorization authorizing the Department to recover interim SFPSS program benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or the initial payment after the decision on SSI eligibility. The following provisions are considered part of the Interim Assistance Authorization:

(A) Interim SFPSS program benefits include only those SFPSS program cash benefits paid to the adult, who is applying for SSI, during the period of time that the SSI benefit covers.

(B) For any month in which SSI is prorated, the Department may recover only a prorated amount of the interim SFPSS program cash benefit.

(C) If the Department does not stop delivery of an SFPSS program benefit issued after the SSI payment is made, the SFPSS program payment is included in the interim assistance reimbursement to the Department.

(2) Counting earned and unearned income.

(a) The TANF standards in OAR 461-155-0030 are used to determine eligibility for the SFPSS program.

(b) The SFPSS payment standard (see OAR 461-155-0320) is used to determine the benefit amount for the SFPSS program.

(3) When the only adult in the *filing group* (see OAR 461-110-0330) is applying for SSI, and the child or all children in the *filing group* are receiving an SSI grant, the family does not receive an SFPSS grant. The family remains on TANF (if eligible) and receives a TANF grant.

(4) A client whose impairment no longer meets the criteria in OAR 461-125-0260 is ineligible for SFPSS benefits.

(5) An SFPSS client found by the Social Security Administration (SSA) not to meet disability criteria may continue receiving SFPSS benefits until all SSA administrative appeals are exhausted.

(6) Once a client is approved for SFPSS, the client is no longer subject to OAR 461-120-0340. The client remains exempt from OAR 461-120-0340 as long as the client is eligible for and receiving SFPSS.

(7) Each client is required to participate in the appropriate activities the Department determines necessary, including activities that promote family stability (see OAR 461-001-0000). The Department must consider the needs of an individual with a disability (see OAR 461-001-0000), and a client's need for accommodation or modification.

(8) A client must provide the information necessary for the Department to administer the program.

(a) The necessary information includes that needed to determine appropriate activities for the client and to assess whether a client had good cause (see OAR 461-130-0327) for any failure to meet a requirement of the program.

(b) If a medical condition is in question, the Department will assist and may require the client to provide a medical opinion from a qualified and appropriate medical professional.

(9) The Department offers each client the opportunity to participate in any suitable JOBS program activity (see OAR 461-001-0025).

Stat. Auth.: ORS 411.060, 411.070, 412.006, 412.009, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 412.006, 412.009, 412.014, 412.049, 412.084  
Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-14-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-135-1197

### Good Cause; SFPSS

In the SFPSS program:

(1) The Department does not require a client to provide verification of good cause if providing the verification would expose the client to increased risk of domestic violence (see OAR 461-001-0000).

(2) If in making a determination under this rule, a client's physical or mental impairment is in question, the Department may require the client to provide documentation from a qualified and appropriate medical professional.

(3) A client is excused for good cause from a failure to comply with a requirement of the SFPSS program, including an activity (see OAR 461-001-0025) in a case plan (see OAR 461-001-0025) in the following circumstances:

(a) Participation in a required activity in a case plan would have an adverse effect on or risk to the client's physical or mental health or would expose the client to increased risk of domestic violence (see OAR 461-001-0000).

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(b) Participation is likely to cause undue hardship for the dependent child (see OAR 461-001-0000) or the client.

(c) When the failure to comply is caused by the failure of the Department to timely provide or authorize a support service payment.

(d) Appropriate child care, or day care for an individual in the household who has a disability (see OAR 461-001-0000) that substantially reduces or eliminates the individual's ability to care for himself or herself, cannot be obtained. "Appropriate child care" means that:

(A) Both the provider and the place where care is provided meet health, safety, and provider requirements as required in OAR 461-165-0180;

(B) The care accommodates the parent's work schedule; and

(C) The care meets the specific needs of the dependent child, such as age and special-needs requirements.

(e) The work attachment position or employment offered is vacant due to a strike, lockout, or other labor dispute.

(f) The work attachment position or employment requires the client to join a union, and the client has religious objections to unions.

(g) The client's participation in a required activity in a case plan would prevent or interfere with the client's participation in an activity of the Grande Ronde Tribe's NEW program.

(h) The client's failure to participate is due to a circumstance beyond his or her reasonable control.

(i) When the failure to comply is caused by an aspect of the client's disability, including the Department's failure to provide a reasonable accommodation.

(j) The client quits a job to accept another job with a monthly income at least equal to the monthly income of the first job.

(k) An individual separated from his or her most recent employment for circumstances the Department determines are reasonable.

Stat. Auth.: ORS 411.060, 412.006, 412.009, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 412.006, 412.009, 412.014, 412.049

Hist.: SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-135-1250

### Specific Requirements: Post-TANF

(1) This rule explains specific requirements for the Post-TANF program. Through September 30, 2010, the Post-TANF program provides \$100 per month per qualifying adult in aid for 12 consecutive months or until the household income exceeds 250 percent of the Federal Poverty Level (FPL), whichever comes first, as long as the client meets JOBS federally required participation rates (see OAR 461-001-0025) in combined unsubsidized paid work and JOBS activities.

(2) Effective October 1, 2010, the Post-TANF program provides \$50 per month per qualifying adult in aid for 12 consecutive months or until the household income exceeds 250 percent of the FPL, whichever comes first, as long as the client meets JOBS federally required participation rates in combined unsubsidized paid work and JOBS activities.

(3) To enroll in the Post-TANF program, a client must:

(a) Have obtained unsubsidized paid employment;

(b) Have become ineligible for the Pre-TANF, TANF or SFPSS programs due to earnings; and

(c) Be a Work Eligible Individual as defined by federal regulations.

(4) To remain eligible for the monthly Post-TANF payment, the client must meet the requirements of all of the following subsections:

(a) Meet all TANF eligibility requirements, except the client need not meet the following requirements:

(A) OAR 461-120-0310 and 461-120-0340 (child support assignment and cooperation);

(B) OAR 461-120-0330 (pursuing assets);

(C) OAR 461-125-0010 (deprivation);

(D) OAR 461-155-0030 (income limits); and

(E) OAR 461-160-0015 (resource limits).

(b) Report and meet the monthly JOBS federal participation requirements with unsubsidized paid work and, if necessary, other JOBS activities.

(c) Provide the Department with employer-produced documents of paid, unsubsidized work hours within 45 days after Pre-TANF, TANF, or SFPSS has ended.

(d) The client must also provide employer-produced documents of paid, unsubsidized work hours each time requested by the Department or no later than the last day of the sixth month following the date the client provides the verification of work hours in accordance with subsection (c) of this section.

(e) Report all changes in residency and household group (see OAR 461-110-0210) affecting Post-TANF eligibility within 10 days of the occurrence.

(f) Changes reported for another program that affect Post-TANF eligibility are considered reported for Post-TANF.

(5) A client failing to comply with subsection (3)(c) of this rule but then providing documents after 45 days is eligible for Post-TANF payments only in the month the local Department office receives the documents and the months thereafter.

(6) Household income for the Post-TANF program is calculated in accordance with all TANF financial rules.

(7) Each parent (see OAR 461-001-0000) of a two-parent family is entitled to a monthly Post-TANF payment if both parents meet all Post-TANF enrollment and eligibility requirements.

(8) Monthly payments in the Post-TANF program begin the month after the last regular TANF benefit payment; or for Pre-TANF clients, the month after the Department verifies that the client meets TANF eligibility requirements.

(9) A client in the Post-TANF program is entitled to support services in accordance with OAR 461-190-0241. Additional support services may be granted with manager approval.

(10) A client is no longer eligible for a Post-TANF payment when the client does not meet JOBS federal participation requirements due to:

(a) Loss of employment;

(b) A reduction in work hours, and the client chooses not to participate in required JOBS activities offered by the Department; or

(c) A reduction in JOBS activity hours without good cause (see OAR 461-130-0327) that when combined with work hours does not meet the JOBS federally required participation rates.

Stat. Auth.: ORS 411.060, 411.070, 412.006, 412.009, 412.049, 412.124

Stats. Implemented: ORS 411.060, 411.070, 412.006, 412.009, 412.049, 412.124, 2009 Or. Laws ch. 827

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 29-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-150-0055

### Eligibility and Budgeting; HKC, OHP

In the OHP program:

(1) The budget month (see OAR 461-001-0000) is:

(a) For a new applicant, the month of application.

(b) For a client reapplying at the end of an OHP certification period (see OAR 461-001-0000), no longer eligible for his or her current OHP program, or moving from the BCCM, EXT, GAM, MAA, MAF, OSIPM, REFM, or SAC programs to the OHP program: the last month of the current eligibility (see OAR 461-001-0000) period.

(c) When the Department initiates a redetermination of eligibility, the month the Department initiates a date of request (see OAR 461-115-0030).

(d) For an individual joining a filing group (see OAR 461-110-0400), the month in which the individual requests medical benefits.

(e) For a late reapplication, the month the Department receives the new application.

(f) For a new applicant or current recipient who is not eligible using the budget month described in subsections (1)(a) to (1)(d) of this rule, any month falling within 45 days after the date of request.

(2) Countable (see OAR 461-001-0000) income is determined as follows:

(a) Income is considered available during a month under OAR 461 140 0040.

(b) Income is not annualized, converted, or prorated.

(c) For a self employed client, countable self-employment income is determined under OAR 461-145-0920 and 461-145-0930.

(3) Except as provided in section (5) of this rule, the average countable income of the financial group (see OAR 461-110-0530) is calculated as follows:

(a) The income of the financial group from the month prior to the budget month and the actual income already received in the budget month plus income that reasonably may be expected to be received in the budget month is added.

(b) The total is divided by two, and the result is the average countable income assigned to the budget month of the financial group.

(c) The average countable income of the financial group is used to determine eligibility for OHP under OAR 461 160 0700.

(4) A change in income or resources during a certification period (see OAR 461-001-0000) does not affect the eligibility of the benefit group (see OAR 461-110-0750) for that certification period.

(5) In the HKC, OHP-CHP, and OHP-OPC programs, when an ELA determination finds a child eligible for medical assistance and the child meets all other OHP-CHP, OHP-OPC, or HKC program nonfinancial eligi-

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bility requirements, the number of need group (see OAR 461-110-0630) members is the same as the number of eligibility group members as determined by the ELA. The countable income of the *financial group* is the same as the income amount determined by the ELA.

(a) A child is deemed eligible for the HKC, OHP-CHP, or OHP-OPC program as follows:

(A) If the income of the need group is below 163 percent of the federal poverty level (FPL) as listed in OAR 461-155-0180, the Department deems the child eligible for OHP-OPC.

(B) If the income of the need group is at or above 163 percent of the FPL but under 201 percent of the FPL, the Department deems the child eligible for OHP-CHP.

(C) If the income of the need group is at or above 201 percent of the FPL, the Department deems the child eligible for HKC.

(b) If the income of the need group is above 301 percent of the FPL, the Department determines eligibility using the standard medical assistance eligibility determination processes.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 414.231

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 38-2010(Temp), f. & cert. ef. 11-1-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-155-0030

### Income and Payment Standards; MAA, MAF, REF, SAC, TANF

In the MAA, MAF, REF, SAC, and TANF programs, the income standards are as follows:

(1) The Countable Income Limit Standard is the amount set as the maximum countable income limit.

(a) For each *need group* (see OAR 461-110-0630) in the REF and TANF programs containing an adult and for all need groups in the MAA, MAF, and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) In the TANF program, a caretaker relative (see OAR 461-001-0000) other than a parent (see OAR 461-001-0000) who chooses not to be included in the need group is subject to the "no-adult countable income limit standard" for the need group under subsection (c) of this section. The "non-needy countable income limit standard" for the filing group is as follows: [Table not included. See ED. NOTE.]

(c) In the REF and TANF programs, when the need group contains no adults, the "no adult countable income limit standard" is calculated as follows:

(A) Refer to the Countable Income Limit Standard for need groups with adults. Use the standard for the number of individuals in the *household group* (see OAR 461-110-0210).

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group. The result is the standard.

(2) The Adjusted Income/Payment Standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

(a) For need groups containing an adult in the REF and TANF programs and for all need groups in the MAA, MAF, and SAC programs, except as provided otherwise in subsection (b) of this section, the following table is used: [Table not included. See ED. NOTE.]

(b) Effective October 1, 2010, to calculate cash benefits for a need group with an adult in the REF and TANF programs, the following table is used: [Table not included. See ED. NOTE.]

(c) In the REF and TANF programs, when the need group contains no adult, the No-Adult Adjusted Income/Payment Standard is calculated as follows:

(A) Refer to the Adjusted Income/Payment Standard for need groups with adults. Use the standard for the number of individuals in the household group.

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group.

(D) Add \$12 to the figure calculated in paragraph (C) of this subsection.

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

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, 412.124

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.400, 412.006, 412.049, 412.124

Hist.: AFS 80-1989, f. & cert. ef. 2-1-90; 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 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 6-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 9-30-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-155-0035

### Cooperation Incentive Payment Standard; REF, TANF

(1) The cooperation incentive is a monthly payment added to the TANF cash grant. OAR 461 135 0210 explains who is eligible for this incentive payment.

(2) Except as provided in section (4) of this rule, when there is an adult in the need group, the incentive payment is based on the number of people in the need group as follows:

(a) One person — \$26

(b) Two people — \$32

(c) Three people — \$43

(d) Four people — \$52

(e) Five people — \$52

(f) Six people — \$75

(g) Seven people — \$75

(h) Eight or more people — \$109

(3) Except as provided in section (4) of this rule, when there is no adult in the need group, the incentive is calculated as follows:

(a) The payment authorized by section (1) of this rule is determined based on the number of people in the household group rather than in the need group. For instance, if there are three people in the household group, the amount used for this calculation is \$43.

(b) The figure obtained in subsection (a) of this section is divided by the number of people in the household group, and the result is rounded to the next lower whole number.

(c) The figure obtained in subsection (b) of this section is multiplied by the number of people in the need group. The result is the incentive payment.

(4) All Cooperation Incentive payments end on September 30, 2010. Beginning October 1, 2010, no client in the REF or TANF program will receive a Cooperation Incentive Payment.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 412.006, 412.049

Hist.: AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-155-0180

### Poverty Related Income Standards; Not OSIP, OSIPM, QMB, TANF

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2010 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 133 percent of the 2010 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 150 percent of the 2010 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 163 percent of the 2010 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(6) A monthly income standard set at 185 percent of the 2010 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(7) A monthly income standard set at 200 percent of the 2010 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(8) A monthly income standard set at 201 percent of the 2010 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049



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Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 4-2010, f. & cert. ef. 3-31-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-155-0225

### Income Standard; HKC, OHP, REFM

(1) In the HKC and OHP programs:

(a) If a *financial group* (see OAR 461-110-0530) contains a person with significant authority in a business entity — a “principal” as defined in OAR 461-145-0088 — the group is ineligible if the gross income assigned to the budget month (see OAR 461-001-0000) of the business entity is \$20,000 or more. If the *need group* (see OAR 461-110-0630) is not ineligible under this section, its eligibility is evaluated under subsection (b) of this section.

(b) The countable (see OAR 461-001-0000) income standards are as follows:

(A) Except for a child found eligible for medical assistance based on an ELA determination, the countable income standard for OHP-OPC and OHP-OPU is 100 percent of the federal poverty level, as listed in OAR 461-155-0180(2), based on the size of the need group.

(B) The countable income standard for OHP-OP6 is 133 percent of the federal poverty level, as listed in OAR 461-155-0180(3), based on the size of the need group.

(C) The countable income standard for OHP-OPP is 185 percent of the federal poverty level, as listed in OAR 461-155-0180(5), based on the size of the need group.

(D) The countable income standard for OHP-CHP is below 201 percent of the federal poverty level, as listed in OAR 461-155-0180(7), based on the size of the need group.

(E) The countable income standard for a child found eligible for medical assistance based on an ELA determination is determined under OAR 461-150-0055(5).

(2) In the REFM program, the income standard is 200 percent of the federal poverty level, as listed in OAR 461-155-0180(6), based on the size of the need group.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404 & 414.231  
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 414.231  
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; 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 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 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 10-1998, f. 6-29-98, cert. ef. 7-1-98; 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; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 2-2004(Temp), f. & cert. ef. 2-13-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 31-2010(Temp), f. & cert. ef. 9-15-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-155-0320

### Payment Standard; SFPSS

In the SFPSS program:

(1) Except as provided in section (3) of this rule, the following payment standards apply:

(a) When one adult in the *filing group* (see OAR 461-110-0330) is applying for SSI: [Table not included. See ED. NOTE.]

(b) When two or more adults in the *filing group* are applying for SSI: [Table not included. See ED. NOTE.]

(2) Except as provided in section (3) of this rule, the standard for eleven individuals or more in the need group (see OAR 461-110-0530) is the sum of the payment for ten individuals in the need group, plus \$109 for each additional individual in the need group, plus the cooperation incentive for ten individuals in the need group.

(3) Effective October 1, 2010, the following payment standards apply:

(a) When one adult in the *filing group* (see OAR 461-110-0330) is applying for SSI: [Table not included. See ED. NOTE.]

(b) When two or more adults in the *filing group* are applying for SSI: [Table not included. See ED. NOTE.]

(c) The standard for eleven individuals or more in the need group is the sum of the 43 percent SSI amount for ten individuals in the need group, plus the payment for ten individuals in the need group, plus \$110 for each additional individual in the need group.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.014, 412.049  
Stats. Implemented: ORS 409.050, 411.060, 411.070, 412.006, 412.014, 412.049

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-155-0688

### Prescription Drug Co-pay Coverage

In the OSIPM program for a client who is receiving SSI:

(1) The Department will provide a payment for all Medicare Part D or Veteran’s Administration Health Care prescription co-pays if a client’s co-pays exceed \$10 per month.

(2) Payment for Medicare Part D co-pays is limited to the current Low-Income Subsidy (LIS) program amounts for a fully dual eligible individual under 100 percent of the Federal Poverty Limit.

(3) If the payment exceeds \$30 per month, it must be approved by Seniors and People with Disabilities Division central office staff.

Stat. Auth.: ORS 411.060, 411.083, 411.706  
Stats. Implemented: ORS 411.060, 411.083, 411.704, 411.706  
Hist.: SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 33-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-155-0693

### Special Need; Transportation Services Payment; OSIPM

In the OSIPM program:

(1) The following individuals may be eligible for a transportation services payment:

(a) A client who receives SSI; or

(b) A client who the Department determines meets the requirements of OAR 461-125-0370(1)(c) and has adjusted income less than the SSI standard.

(2) Services eligible for payment under this rule are for transportation to non-medical and non-waivered activities and resources approved by the Department. Examples of such transportation services include, but are not limited to: reimbursement for non-commercial transportation not available through natural supports (limited to mileage only at the full United States General Services Administration mileage reimbursement rate); transportation provided by common carriers, taxicab, or bus; and assistance with purchase of a pass for public transportation.

(3) The following items are not eligible for payment under this rule: purchase of a vehicle; vehicle maintenance or repair; compensation for non-commercial transportation providers (payment to non-commercial transportation providers is limited to mileage only); and transportation services that may be obtained through other means, such as the State Medicaid Plan, waiver, or other public or private resources available to the individual, including natural supports.

(4) Payment for services authorized by this rule may not exceed \$25 per month.

(5) Service costs must be verified annually or when questionable.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.706  
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706  
Hist.: SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 22-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 33-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-160-0410

### Use of Income and Income Deductions When There Are Ineligible or Disqualified Group Members; SNAP

When a member of the *financial group* (see OAR 461-110-0530) is not in the need group (see OAR 461-110-0630), benefits in the SNAP program are calculated as follows:

(1) If the member is a qualified non-citizen (see OAR 461-120-0125(1)(a)-(g)) who does not meet the alien status requirements, the following procedure is used:

(a) Benefits are calculated as if the qualified non-citizen is eligible, except that a TANF grant received by the filing group (see OAR 461-110-0370) is prorated among the members of the financial group. A pro rata share is counted for each financial group member who meets the citizenship or alien status requirements.

(b) Benefits are then calculated as if the qualified non-citizen is not a member of the filing group, except that a TANF grant received by the filing group is prorated per section (3) of this rule. Any income received by another member of the filing group from the qualified non-citizen is counted as income of the financial group. No expenses paid by the qualified non-citizen are deducted from gross income.

(c) The household’s benefits are the lesser of the amounts calculated in subsections (a) and (b) of this section.

(2) The process described in sections (3) and (4) of this rule is used if the member is:

(a) A non-citizen but not a qualified non-citizen;

# ADMINISTRATIVE RULES

(b) Disqualified for failing to obtain or provide a Social Security Number; or

(c) Unwilling to disclose alien status.

(3) If the member is in a group described in section (2) of this rule:

(a) The member's countable (see OAR 461-001-0000) income is prorated among the members in the financial group.

(b) The pro rata share of each individual not in the need group is excluded.

(c) The rest of the prorated income is countable income for the financial group.

(4) An ineligible or disqualified member covered by section (2) of this rule is entitled to all income deductions for which the member qualifies. When paid by the member, or billed to the member and unpaid, deductions for shelter, child support, and dependent care are calculated as follows:

(a) The deductions, except deductions for the utility standard, are prorated among the members of the financial group.

(b) The prorated share of the members of the need group is deducted.

(c) The deduction for the utility standard is made in accordance with OAR 461-160-0420.

(5) The countable income of the following financial group members, subject to allowable deductions, is used to determine benefits:

(a) A client disqualified for failure to comply with the requirements of the OFSET program or because of an intentional program violation.

(b) A client:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the client is fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey; or

(B) Violating a condition of probation or parole imposed under a federal or state law.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; 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 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 10-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 10-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 6-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-160-0430

### Income Deductions; SNAP

(1) Deductions from income are subtracted from *countable income* (see OAR 461-140-0010) in the following order to determine *adjusted income* (see OAR 461-001-0000) for the SNAP program:

(a) An earned income deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as Work Supplementation wages.

(b) A standard deduction of \$141 per month for a benefit group (see OAR 461-110-0750) of one, two, or three individuals. A standard deduction of \$153 for a benefit group of four individuals. A standard deduction of \$179 for a benefit group of five individuals. A standard deduction of \$205 for a benefit group of six or more individuals.

(c) A dependent care deduction for dependent care costs billed to a member of the financial group (see OAR 461-110-0530) and not paid for through any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the *need group* (see OAR 461-110-0630) to--

(A) Accept or continue employment;

(B) Seek employment, including a job search that meets the requirements of a case plan (see OAR 461-001-0020); or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for elderly clients and clients who have a disability (see OAR 461-001-0015) in the need group. The deduction is calculated by determining the total of their deductible medical costs (see OAR 461-160-0415) and subtracting \$35. The remainder is the medical deduction.

(e) A deduction for child support payments (including cash medical support) a member of the household makes under a legal obligation to a child not a member of the household group (see OAR 461-110-0210), including payments for the current month and for payments on arrearages.

Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

(A) For SNAP clients required to pay room and board in a nonstandard living arrangement (see OAR 461-001-0000), the shelter deduction is--

(i) The cost of room and board, minus the payment standard for the benefit group; or

(ii) The actual room cost, if the client can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other clients, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from countable income. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the filing group has no member who has a disability or is elderly (see OAR 461-001-0015). The limit is \$459.

(2) If the client cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the client provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period authorized for processing applications (see OAR 461-115-0210), the benefits for the *initial month* (see OAR 461-001-0000) are recalculated using the deduction.

Stat. Auth.: ORS 411.816

Stat. Implemented: ORS 411.816 & 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-00, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; 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 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 39-2010(Temp), f. & cert. ef. 11-4-10 thru 5-3-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-160-0700

### Use of Income; HKC, OHP

In the HKC and OHP programs, the Department uses income to determine eligibility as follows:

(1) The average *countable income* of the *financial group* (see OAR 461-110-0530) assigned to the budget month (see OAR 461-001-0000) is determined under OAR 461-150-0055.

(2) When an ELA is determining whether a child qualifies under the income standard, the need group (see OAR 461-110-0630) members and income are determined under OAR 461-150-0055(5).

(3) For each member of the need group the average countable (see OAR 461-001-0000) income of the financial group assigned to the budget month is compared to the applicable OHP program income standard. If the average countable income of the financial group is below the applicable income standard for the need group size and all other financial and non-financial eligibility requirements are met, the need group member is eligible for OHP program benefits. If the average countable income of the financial group equals or exceeds the applicable OHP program income standard, the need group member is ineligible for OHP program benefits except as provided by section (4) of this rule.

(4) The following members of the need group who are not eligible under section (3) of this rule are eligible for OHP program benefits if all other financial and non-financial eligibility requirements are met and the countable income of the financial group, received or anticipated to be received in the budget month, is below the applicable OHP program income standard:

(a) OHP-CHP program clients.

(b) OHP-OPC program clients.

(c) OHP-OPP program clients.

(d) OHP-OP6 program clients.

(e) Victims of domestic violence.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 414.025, 414.231  
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 414.025, 414.231  
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 38-2010(Temp), f. & cert. ef. 11-1-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-170-0011

### Changes That Must Be Reported

- (1) A change in employment status is considered to occur as follows:
  - (a) For a new job, the change occurs the first day of the new job.
  - (b) For a job separation, the change occurs on the last day of employment.
- (2) A change in source of income is considered to occur as follows:
  - (a) For earned income, the change occurs upon the receipt by the client of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.
  - (b) For unearned income, the change occurs the day the client receives the new or changed payment.
- (3) A client must report, orally or in writing, the following changes:
  - (a) In the BCCM program, a client must report either of the following changes within 10 days of occurrence:
    - (A) A change in health care coverage.
    - (B) A change in residence.
  - (b) In the ERDC program:
    - (A) A client not participating in SRS in the SNAP program must report the following changes within 10 days of occurrence:
      - (i) A change in child care provider.
      - (ii) A change in employment status.
      - (iii) A change in mailing address or residence.
      - (iv) A change in membership of the filing group (see OAR 461-110-0350).
      - (v) A change in source of income expected to continue.
    - (B) A client participating in SRS in the SNAP program must report the following changes by the tenth day of the month following the month of occurrence:
      - (i) A change in child care provider.
      - (ii) Loss of employment.
      - (iii) Monthly income exceeding the SNAP countable income limit.
      - (iv) A parent (see OAR 461-001-0000) of a child or unborn or the spouse of the caretaker moves into the residence.
    - (C) The ERDC case may continue to follow the reporting requirements in paragraph (3)(b)(B) of this rule without a companion SNAP case in SRS when:
      - (i) The ERDC case was certified in the fifth or sixth month of the SNAP certification period (see OAR 461-001-0000); and
      - (ii) The SNAP companion case automatically closes because the Interim Change Report (see OAR 461-170-0010) was not received.
    - (c) In the EXT program, a client must report any of the following changes within 10 days of occurrence:
      - (A) A change in health care coverage.
      - (B) A change in name.
      - (C) A change in pregnancy status of any member of the filing group (see OAR 461-110-0330).
      - (D) A change in residence.
      - (E) A member in filing group is no longer a dependent child (see OAR 461-001-0000).
        - (d) In the SNAP program:
          - (A) A client assigned to CRS must report any of the following changes within 10 days of occurrence:
            - (i) A change in earned income of more than \$100.
            - (ii) A change in unearned income of more than \$50.
            - (iii) A change in source of income.
            - (iv) A change in membership of the filing group (see OAR 461-110-0370) and any resulting change in income.
            - (v) A change in residence and the shelter costs in the new residence.
            - (vi) A change in the legal obligation to pay child support.
            - (vii) When the sum of cash on hand, stocks, bond, and money in a bank or savings institution account reaches or exceeds program resource limits.
            - (viii) Acquisition or change in ownership of a non-excluded vehicle.
          - (B) A client assigned to SRS must report when the filing group's monthly income exceeds the SNAP countable income limit by the tenth day of the month following the month of occurrence.
          - (C) A client assigned to TBA is not required to report any changes.

(e) In the GA, GAM, OSIP, OSIPM, and QMB programs a client must report all changes that may affect eligibility within 10 days of occurrence, including any of the following changes:

- (A) A change in employment status.
- (B) A change in health care coverage.
- (C) A change in membership of the household group (see OAR 461-110-0210).
- (D) A change in marital status.
- (E) A change in residence.
- (F) A change in resources.
- (G) A change in source or amount of income.
- (f) In the MAA, MAF, REF, SAC, SFPSS, and TANF programs, clients assigned to CRS must report any of the following changes within 10 days of occurrence:
  - (A) Acquisition or change in ownership of a non-excluded vehicle.
  - (B) A change in earned income more than \$100.
  - (C) A change in employment status.
  - (D) A change in membership of the household group (see OAR 461-110-0210).
  - (E) A change in mailing address or residence.
  - (F) A change in pregnancy status of any member of the filing group.
  - (G) A change in source of income.
  - (H) A change in unearned income more than \$50.
  - (I) A change in who pays the shelter costs if the costs will be paid by a non-custodial parent.
  - (J) Sale or receipt of a resource that causes total resources to exceed program resource limits.
  - (g) In the HKC and OHP programs, a client must report any of the following changes within 10 days of occurrence:
    - (A) A change in availability of employer-sponsored health insurance.
    - (B) A change in health care coverage.
    - (C) A change in mailing address or residence.
    - (D) A change in name.
    - (E) A change in pregnancy status of any member of the filing group (see OAR 461-110-0400).
    - (h) In the REFM program, clients must report the following changes within 10 days of occurrence:
      - (A) A change in membership of the household group (see OAR 461-110-0210).
      - (B) A change in residence.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231  
Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; Renumbered from 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, 461-170-0035 by SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-175-0010

### What a Decision Notice Must Include

- (1) A *decision notice* (see OAR 461-001-0000):
  - (a) Specifies the date the notice is mailed, which is the effective date for a basic decision notice (see OAR 461-001-0000).
  - (b) Except as provided in section (2) of this rule, specifies the action the Department intends to take and the effective date of the action.
  - (c) Specifies the reasons for the action.
  - (d) In the SNAP program, except as provided in paragraph (2)(c)(B) of this rule, provides the name and phone number of the Department staff person or identifies the office to contact for additional information.
  - (e) Informs the client of the extent to which the client has a right to a hearing before an impartial person.
  - (f) Specifies the method and deadline for requesting a hearing.
  - (g) Informs the client of the right to representation, including legal counsel, and the right to have witnesses testify on his or her behalf.
  - (h) Provides information about the availability of free legal help.



# ADMINISTRATIVE RULES

(i) Cites the rules that support the action.

(2) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or any other mass change under a program operated by a federal agency or to reflect a mass change to payments in a program operated by the Department:

(a) The requirements in subsection (1)(b) of this rule are optional. Instead of specifying the action the Department intends to take and the effective date of the action, the decision notice may state all of the following:

- (A) The general nature of the change.
- (B) Examples of how the change affects a client's benefits.
- (C) The month in which the change will take place.

(b) The decision notice must also state the client's right to continue receiving benefits.

(c) In the SNAP program:

(A) The decision notice must also state under what circumstances benefits will be continued pending a hearing.

(B) The requirements in subsection (1)(d) of this rule are optional. A decision notice may indicate instead that a client may contact a local office or worker for additional information.

(3) In the SNAP program, a continuing benefit decision notice (see OAR 461-001-0000) and a decision notice under section (2) of this rule also must state that the client's household will incur a liability for any overisued benefits if:

- (a) Benefits are continued pending the hearing; and
- (b) The hearing decision is adverse to the client.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-175-0200

### Notice Situations; General Information

(1) In the EA program, a *basic decision notice* (see OAR 461-001-0000) is sent for all situations.

(2) In the SNAP program:

(a) A continuing benefit decision notice (see OAR 461-001-0000) is sent to cases that are recertified early to align the SNAP certification end date with the end date of TANF or medical benefits.

(b) A basic decision notice is sent for all other actions on applications for assistance.

(3) In the JOBS program:

(a) A basic decision notice is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) In the TANF program, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(5) In the Pre-TANF program, a basic decision notice is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(6) In the TA-DVS program, a basic decision notice (see OAR 461-001-0000) is sent to a safe mailing address or hand delivered for all situations. This includes when the program is approved, denied, or closed (prior to the end of the 90 day eligibility period) and when a payment under the program is denied.

(7) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(8) In all programs:

(a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a decision notice with another decision notice or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a decision notice or contested case notice.

(b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the financial group (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No decision notice is required in each of the following situations:

(A) Benefits are ended because there is no living person in the benefit group (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).

(D) A decision notice that included the eligibility begin and end dates was given for TA-DVS program benefits and the 90 day eligibility period ends.

(d) When the Department amends a decision notice with another decision notice under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.

(e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.

(f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

(9) When a child is found eligible for HKC program benefits based on an ELA determination, the Department sends a basic decision notice which includes a statement about how the child may qualify for HKC or OHP program benefits with a lower or no premium payment.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231

Stats. Implemented: ORS 183.415, 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-29-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 11-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 3-2010(Temp), f. & cert. ef. 2-23-10 thru 8-22-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-175-0250

### Notice Situation; Mass Changes

(1) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in a program operated by the Department:

(a) Except as provided in subsection (b) of this section, the type of decision notice (see OAR 461-001-0000) used is the same as otherwise applies to the reduction or closure of benefits under the rules of this division.

(b) In the SNAP program, a *continuing benefits* decision notice (see OAR 461-001-0000) may be used if the rules in this division of rules would otherwise require a timely continuing benefits decision notice (see OAR 461-001-0000).

(c) OAR 461-175-0010(2) and (3) modify the content requirements for the decision notice that apply to other decision notices under OAR 461-175-0010(1).

(2) In the SNAP program, no decision notice is required when the Department makes the following mass changes:

# ADMINISTRATIVE RULES

(a) An annual adjustment to income limits, the shelter deduction, or the standard deduction.

(b) An annual adjustment to a standard utility allowance.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 412.014, 412.049  
Stats. Implemented: ORS 409.010, 411.060, 411.816, 412.014, 412.049  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

## 461-193-0560

### Payment Standards; Refugee Case Services Project (RCSP)

In the RCSP program:

(1) Except as provided in section (2) of this rule, the cash assistance payment standard amount for a client is the sum total of the TANF payment standard under OAR 461-155-0030(2) plus the Cooperation Incentive under OAR 461-155-0035(2).

(2) Effective October 1, 2010, the cash assistance payment standard amount for a client is the same as the TANF payment standard under OAR 461-155-0030(2)(b).

Stat. Auth.: ORS 409.010, 409.050, 411.060, 411.070, 412.006, 412.049  
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 412.006, 412.049  
Hist.: AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 2-1994, f. & cert. 2-1-94; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 6-1997, f. 5-28-97, cert. ef. 6-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 3-2003(Temp), f. & cert. ef. 2-14-03 thru 6-30-03; SSP 18-2003, f. & cert. ef. 7-1-03; SSP 27-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 34-2003, f. 12-31-03 cert. ef. 1-1-04; SSP 7-2009, f. & cert. ef. 4-1-09; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11

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

**Adm. Order No.:** SSP 42-2010(Temp)

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11 thru 6-30-11

**Notice Publication Date:**

**Rules Amended:** 461-145-0140, 461-145-0220, 461-155-0030, 461-160-0015, 461-190-0211

**Rules Suspended:** 461-145-0143

**Subject:** OAR 461-145-0140 about how the Department treats tax credits received by a client when making eligibility and benefit level determinations is being amended to restate how the Making Work Pay (MWP) tax credit under the American Recovery and Reinvestment Act of 2009 (Pub. Law 11-5) is received by a client. This rule also is being amended to remove the earned income exclusion for General Assistance (GA), General Assistance Medical (GAM), Healthy KidsConnect (HKC), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), or Qualified Medicare Beneficiaries (QMB) program clients who received an MWP tax credit as the option to receive an MWP tax credit on a monthly basis expired December 31, 2010.

OAR 461-145-0143 about how the Department treats Making Work Pay and American Recovery and Reinvestment Act of 2009 (Pub. Law 11-5) economic recovery payments when determining a client's eligibility for Department program benefits is being suspended as the federal provisions authorizing these payments expired December 31, 2010.

OAR 461-145-0220 about the treatment of a client's home when the Department is determining a client's assets for individuals receiving long-term care service is being amended to revise the policy stating when the equity value of the home is excluded from the client's assets.

OAR 461-155-0030 about the income standards in the Job Opportunity and Basic Skills (JOBS), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), Medical Coverage for Children in Substitute or Adoptive Care (SAC), and Temporary Assistance for Needy Families (TANF) programs is being amended to state the countable income limit for a JOBS program filing group (the individuals from the household whose circumstances are considered in the eligibility determination

process) with a non-custodial parent who has a dependent child receiving TANF benefits, when both the parent and child are residents of Oregon, for the parent to be eligible to participate in JOBS program activities.

OAR 461-160-0015 about resource limits used in eligibility determinations for the Department's programs is being amended to restate the resource limits effective January 1, 2011 for clients of the Qualified Medicare Beneficiaries (QMB) program.

OAR 461-190-0211 about the payments the Department provides to clients for support services (child care, housing, transportation, and other needs) to help a client successfully comply with the activities in the client's case plan is being amended to state that a non-custodial parent of a child receiving Temporary Assistance for Needy Families (TANF) program benefits must be in a filing group (the individuals from the household whose circumstances are considered in the eligibility determination process) with income below the countable income limit standard under OAR 461-155-0030 to be eligible to receive support service payments.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-145-0140

### Earned Income Tax Credit (EITC) and Making Work Pay (MWP) Tax Credit

(1) There are federal and state earned income tax credit (EITC) programs for low-income families.

(a) An EITC may be received in one of two ways:

(A) As one annual payment received at the time of the normal income tax returns.

(B) As an advance in the employee's paycheck.

(b) The EITC is excluded from *assets* (see OAR 461-001-0000).

(2) The American Recovery and Reinvestment Act (ARRA) of 2009 created the Making Work Pay (MWP) tax credit. This credit applies to tax years 2009 and 2010. An MWP tax credit is received as one annual payment at the time of the normal income tax returns. An MWP tax credit received as a portion of an individual's federal tax return is excluded from assets.

Stat. Auth.: ORS 411.060, 411.404, 411.706, 411.816, 412.049, 414.231  
Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.706, 411.816, 412.049, 414.231  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2010(Temp), f. & cert. ef. 4-22-10 thru 10-19-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11

## 461-145-0143

### Economic Recovery Payment

The \$250 economic recovery payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded income in the month of receipt and an excluded resource in the month of receipt and for the following nine months.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.826, 414.831  
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.826, 414.831  
Hist.: SSP 3-2009(Temp), f. & cert. ef. 3-3-09 thru 8-30-09; SSP 24-2009, f. & cert. ef. 8-31-09; SSP 25-2009(Temp), f. & cert. ef. 9-1-09 thru 2-28-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 20-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; SSP 32-2010, f. & cert. ef. 10-1-10; Suspended by SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11

## 461-145-0220

### Home

(1) Home defined: A home is the place where the filing group lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:

(a) Land on which the home is built and contiguous property.

(A) In all programs except the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).

(ii) It must not be separated by a public right-of-way, such as a road.

(iii) It must be property that cannot be sold separately from the home.

# ADMINISTRATIVE RULES

(B) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

(2) Exclusion of home and other property:

(a) For a client who has an initial month (see OAR 461-001-0000) of long-term care on or after January 1, 2006:

(A) For purposes of this subsection:

(i) The definition of "child" in OAR 461-001-0000 does not apply.

(ii) "Child" means a biological or adoptive child who is:

(I) Under age 21; or

(II) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The equity value of a home is excluded if the requirements of at least one of the following subparagraphs are met:

(i) The child of the client occupies the home.

(ii) The spouse of the client occupies the home.

(iii) The equity in the home is \$506,000 or less, and the requirements of at least one of the following sub-subparagraphs are met:

(I) The client occupies the home.

(II) The home equity is excluded under OAR 461-145-0250.

(III) The home is listed for sale per OAR 461-145-0420.

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than \$506,000 and the client is unable legally to convert the equity value in the home to cash.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461 145 0420.

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the SNAP program, when the financial group is absent because of employment or training for future employment.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the client is absent to receive care in a medical institution, if one of the following is true:

(A) The absent client has provided evidence that he or she will return to the home. The evidence must reflect the subjective intent of the client, regardless of the client's medical condition. A written statement from a competent client is sufficient to prove the intent.

(B) The home remains occupied by the client's spouse, child, or a relative dependent on the client for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11

## 461-155-0030

### Income and Payment Standards; MAA, MAF, REF, SAC, TANF

In the JOBS, MAA, MAF, REF, SAC, and TANF programs, the income standards are as follows:

(1) The Countable Income Limit Standard is the amount set as the maximum countable income limit.

(a) For each need group (see OAR 461-110-0630) in the REF and TANF programs containing an adult and for all need groups in the MAA, MAF, and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) In the TANF program, a caretaker relative (see OAR 461-001-0000) other than a parent (see OAR 461-001-0000) who chooses not to be included in the need group is subject to the "no-adult countable income limit standard" for the need group under subsection (c) of this section. The "non-needy countable income limit standard" for the filing group is as follows: [Table not included. See ED. NOTE.]

(c) In the REF and TANF programs, when the need group contains no adults, the "no adult countable income limit standard" is calculated as follows:

(A) Refer to the Countable Income Limit Standard for need groups with adults. Use the standard for the number of individuals in the household group (see OAR 461-110-0210).

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group. The result is the standard.

(d) In the JOBS program, for the filing group of a non-custodial parent who resides in Oregon and whose dependent child (see OAR 461-001-0000) is receiving TANF program benefits in Oregon to participate in an activity (see OAR 461-001-0025) of the JOBS program, the countable (see OAR 461-001-0000) income limit is as follows:

(2) The Adjusted Income/Payment Standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

(a) For need groups containing an adult in the REF and TANF programs and for all need groups in the MAA, MAF, and SAC programs, except as provided otherwise in subsection (b) of this section, the following table is used: [Table not included. See ED. NOTE.]

(b) Effective October 1, 2010, to calculate cash benefits for a need group with an adult in the REF and TANF programs, the following table is used: [Table not included. See ED. NOTE.]

(c) In the REF and TANF programs, when the need group contains no adult, the No-Adult Adjusted Income/Payment Standard is calculated as follows:

(A) Refer to the Adjusted Income/Payment Standard for need groups with adults. Use the standard for the number of individuals in the household group.

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group.

(D) Add \$12 to the figure calculated in paragraph (C) of this subsection.

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

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, 412.124

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.400, 412.006, 412.049, 412.124

Hist.: AFS 80-1989, f. & cert. ef. 2-1-90; 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 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 6-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 9-30-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11

## 461-160-0015

### Resource Limits

(1) In the EA program, *all countable* (see OAR 461-001-0000) resources must be used to meet the emergent need.

(2) In the ERDC, EXT, HKC, and REFM programs, and for an individual whose eligibility is determined under the OHP-CHP, OHP-OPC, OHP-OPP, or OHP-OP6 programs, there is no resource limit.

(3) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) \$2,000 for a one-person need group (see OAR 461-110-0630) and \$3,000 for a two-person need group.

(b) \$1,000 for an OSIP need group eligible under OAR 461 135 0771. The total cash resources may not exceed \$500 for a one-person need group or \$1,000 for a two-person need group.



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(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).

(4) In the MAA, MAF, REF, SAC, and TANF programs, the resource limit is:

(a) \$10,000 for a *need group* with at least one JOBS participant who is progressing in a case plan.

(b) \$10,000 for a need group with at least one member who is working under a JOBS Plus agreement.

(c) \$2,500 for all other *need groups*, including all TANF applicants.

(5) In the OHP program, the resource limit for an individual whose eligibility is determined under the OHP-OPU program is \$2,000.

(6) In the QMB program, the resource limit is amended in January of each year based on the low income subsidy for Medicare Part D as published by the Health Resources and Services Administration of the U.S. Department of Health and Human Services. Effective January 1, 2011 the resource limit is \$6,680 for a one-person need group and \$10,020 for a need group containing two or more individuals.

(7) In the SNAP program, the resource limit is:

(a) \$3,000 for a *financial group* (see OAR 461-110-0530) with at least one member who is elderly (see OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015).

(b) \$2,000 for all other financial groups.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 414.231  
Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11

## 461-190-0211

### Standards for Support Service Payments

(1) The Department helps an individual comply with the individual's case plan (see OAR 461-001-0025) by providing payments for child care, housing, transportation, and other needs to make participation in a required activity (see OAR 461-001-0025) successful. These payments are provided for costs directly related to participation in an activity, for costs necessary to obtain and retain a job, and for enhancing wages and benefits. In approving JOBS program support service payments, the Department must consider lower cost alternatives. It is not the intent of the Department or of this rule to supplant Department funding with other funding that is available in the community. It is the Department's expectation that case managers and clients will work collaboratively to seek resources that are reasonably available to the client in order to participate in activities.

(2) Support service payments must be authorized in advance and are subject to the limitations of this rule. The following standards apply to support service payments.

(3) Subject to the limitations of state funding, payments for support services (see OAR 461-001-0025) will be made available to an individual if all of the following requirements are met:

(a) The individual is one of the following:

(A) A TANF program applicant or recipient.

(B) A client in the Pre-TANF, Post-TANF, or SFPSS programs.

(C) A minor parent (see OAR 461-001-0000) who has returned to the minor's parent's home in the last 40 days, if the move caused the client to become ineligible for TANF program benefits.

(D) A TANF program client participating in diagnosis, counseling, or treatment programs for substance abuse or mental health.

(E) A non-citizen who is ineligible for the TANF program, who is legally able to work in the United States, and who has a child receiving TANF program benefits.

(F) An individual disqualified from the TANF program for failure to comply with the child-support related requirements of OAR 461-120-0340 and 461 120-0345.

(G) An individual eligible for transition benefits and services under OAR 461 190 0241.

(H) An individual currently receiving TA-DVS program benefits.

(I) A non-custodial parent (see OAR 461-001-0000) of a child receiving TANF program benefits, if both are residents of Oregon and the income of the filing group of the non-custodial parent is below the countable (see OAR 461-001-0000) income limit standard under OAR 461-155-0030.

(J) A recipient of supplemental security income (SSI) who is a volunteer (see OAR 461-130-0310) in an employment program.

(K) A caretaker relative (see OAR 461-001-0000) who is non-needy and is a volunteer in an employment program.

(b) The individual has agreed to participate in a JOBS program activity or another approved activity as specified in the individual's case plan.

(4) For an individual who is eligible for a support service payment under paragraphs (3)(a)(J) and (3)(a)(K) of this rule, the Department will consider that individual's income and resources towards the need.

(5) Denials and Reductions. The Department may reduce, close, or deny in whole or in part an individual's request for a support service payment in the following circumstances:

(a) If the individual is disqualified for failing to comply with a case plan, unless the payment in question is necessary for the client to comply with his or her case plan.

(b) If the purpose for the payment is not related to the individual's case plan.

(c) If the client disagrees with a support service payment offered or made by the Department as outlined in the client's case plan.

(6) Required Verification.

(a) The Department may require the individual to provide verification of a need for the support service prior to approval and issuance of payment if verification is reasonably available.

(b) The Department may require the individual to provide verification of costs associated with a support service if verification is reasonably available.

(7) Child Care. Payments for child care are authorized, as limited by OAR 461 160 0040, if necessary to enable the individual to participate in a JOBS program or another approved activity specified in the individual's case plan. If authorized, payment for child care will be made for:

(a) The lesser of the actual rate charged by the care provider and the rate established in OAR 461-155-0150. The Department rate for children in care less than 158 hours in a month is limited by OAR 461-155-0150, except that the cost of child care may be paid up to the monthly maximum when children are in care less than 158 hours per month and---

(A) Appropriate care is not accessible to the individual at the hourly rate; or

(B) The individual is a teen parent using on-site care while attending education activities.

(b) The minimum hours necessary, including meal and commute time, for the individual to participate in a JOBS program or another approved activity or to obtain and perform employment duties.

(8) Child care payments may be provided when an individual is not participating in an activity of the JOBS program or another approved activity if necessary for the individual to retain a child care provider. Only the minimum amount necessary to maintain the child care slot with the provider may be covered as established in OAR 461-155-0150. Not more than 30 days between a scheduled JOBS program or another approved activity may be covered.

(9) Housing and Utilities. In addition to payments for basic living expenses provided in OAR 461-135-0475, payments may be provided to secure or maintain housing and utilities in the following situations:

(a) To prevent an eviction or utility shut-off, secure housing in order to find or maintain employment, or participate in an activity listed in the individual's case plan. Payment is available when the requirements of all of the following paragraphs are met:

(A) The individual cannot make a shelter or utility payment due to lack of assets.

(B) The lack of assets did not result from a JOBS program or Child Support disqualification, a reduction due to an IPV recovery, overpayment recovery (other than administrative error), or failure by the individual to pay shelter or utility expenses when funds were reasonably available.

(C) The individual's case plan addresses how subsequent shelter or utility payments will be made.

(b) The shelter need results from domestic violence (see OAR 461-001-0000) and the requirements of all of the following paragraphs are met:

(A) The individual is not eligible for the TA-DVS program.

(B) The individual will be able to pay all subsequent shelter costs, either through the individual's own resources or through other resources available in the community.

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(C) The individual's case plan addresses how subsequent shelter costs will be paid.

(c) For clients who are in the Pre-TANF program or are applying for a payment under section (6) of this rule, the Department will make payments if the client meets the eligibility criteria in section (9) of this rule. A client who receives a TANF program grant is expected to meet the housing and utility expenses out of the money received each month in the TANF program grant. Therefore, for clients who receive a TANF program grant, the Department may make payments on a case-by-case basis as appropriate if the client otherwise meets the support service payment eligibility criteria of this section.

(10) Transportation. The Department will provide payments for transportation costs incurred in travel to and from a JOBS program or another approved activity. Payment is made only for the cost of public transportation or the cost of vehicle insurance, repairs, and fuel for a personally owned vehicle. The Department will not authorize payment for repair of a vehicle owned by an individual who is not in the TANF program filing group (see OAR 461-110-0330). Payments are subject to the following considerations:

(a) Payments for public transportation are given priority over payments for a privately owned vehicle.

(b) Payment for a privately owned vehicle is provided if the client or driver has a valid license and either of the following is true:

(A) No public transportation is available or the client is unable to use public transportation because of a verifiable medical condition or disability for which no accommodation is available.

(B) Public transportation is available but is more costly than the cost of car repair or fuel.

(11) Other Payments. The Department will provide payments for other items that are directly related to participation in a JOBS program or another approved activity. Payments under this section may be authorized for:

(a) Reasonable accommodation of a client's disability (see OAR 461-001-0000).

(b) Costs necessary in obtaining and retaining a job or enhancing wages and benefits, such as:

(A) Clothing and grooming for participation in JOBS program activities or job interviews.

(B) Moving expenses necessary to accept employment elsewhere.

(C) Books and supplies for education needs, subject to the limitations provided in OAR 461-190-0199.

(D) Tools, bonding, and licensing required to accept or retain employment.

(c) Tuition for vocational training (see OAR 461-001-0025) only:

(A) After the client has been approved for vocational training;

(B) When no other funding is available;

(C) To the extent that Department funding designated for this purpose is available; and

(D) When the training is necessary for a job leading to a higher wage and high demand occupation, as defined by the Workforce Investment Act (WIA).

(12) Students Receiving Financial Aid. Authorization for payments for students in vocational training who receive financial aid is subject to the following conditions:

(a) A student whose financial aid consists solely of student loans is not required to use any of that financial aid for support services.

(b) Support service payments are not authorized for services specifically covered by federal or state financial aid other than student loans.

(c) Students whose financial aid consists of a combination of loans and grants may be required to pay for support services from any grant money remaining after payment of tuition, fees solely related to the institution where the individual attends, books, and supplies (applying first the loan and then any grants) if the financial aid award letter specifically permits this use of funds.

Stat. Auth.: ORS 411.060, 412.001, 412.006, 412.009, 412.014, 412.049, 412.124

Stat. Implemented: ORS 411.060, 412.001, 412.006, 412.009, 412.014, 412.049, 412.124

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11

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

**Adm. Order No.:** SSP 43-2010(Temp)

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11 thru 4-30-11

**Notice Publication Date:**

**Rules Amended:** 461-150-0055, 461-160-0430, 461-160-0700

**Subject:** OAR 461-150-0055 which concerns eligibility and budgeting in the Oregon Health Plan (OHP) program is being amended to extend changes made by temporary rule on November 1, 2010 because the underlying rule was amended by other permanent changes effective January 1, 2011. This amendment extends this rule to the Healthy KidsConnect (HKC) program. This rule also is being amended to state how the Department determines the budget month (the calendar month from which information is used to determine eligibility and benefit level for the payment month) when the Department initiates a redetermination of eligibility for an HKC or Oregon Health Plan (OHP) program client by sending the client a DHS 945 form about the need to renew their medical benefits. In addition, this rule is being amended to restate how the Department determines the countable income of an HKC or OHP program financial group (the individuals whose income and resources count in determining eligibility). This rule also is being amended to clarify which standard is used to determine eligibility for an HKC, Oregon Health Plan – Persons Under 19 (OHP-CHP), or Oregon Health Plan – Children (OHP-OPC) program client when the Department is using an Express Lane Eligibility (ELE) finding to determine the client's eligibility.

OAR 461-160-0430 about deductions from countable income made to determine adjusted income for the Supplemental Nutrition Assistance Program (SNAP) is being amended to extend changes made by temporary rule on November 4, 2010 because the underlying rule was amended by other permanent changes effective January 1, 2011. This amendment revises the deduction amounts that were effective as of October 1, 2010.

OAR 461-160-0700 which concerns how the Department uses income when determining eligibility for Oregon Health Plan (OHP) and Healthy KidsConnect (HKC) program benefits to extend changes made by temporary rule on November 1, 2010 because the underlying rule was amended by other permanent changes effective January 1, 2011. This amendment restates which countable income the Department uses for a client's budget month (the calendar month from which information is used to determine eligibility and benefit level for the payment month). This rule also is being amended to remove the provision about how the Department determines the members of a need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) following an Express Lane Agency (ELA) finding of eligibility. In addition, this rule is being amended to remove provisions allowing the Department to make an eligibility determination for need group members in the Oregon Health Plan – Persons Under 19 (OHP-CHP), Oregon Health Plan – Children (OHP-OPC), Oregon Health Plan – Children Under 6 (OHP-OP6), and Oregon Health Plan – Pregnant Females and their newborn children (OHP-OPP) programs as well as victims of domestic violence to be eligible for OHP program benefits when the countable income of the financial group (the individuals whose income and resources count in determining eligibility) was below the applicable OHP program income standard even when the average countable income of the financial group equaled or exceeded the applicable OHP program income standard.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-150-0055

### Eligibility and Budgeting; HKC, OHP

In the HKC and OHP programs:

(1) The *budget month* (see OAR 461-001-0000) is:

(a) For a new applicant, the month of application.

(b) For a client reapplying at the end of an OHP *certification period* (see OAR 461-001-0000), no longer eligible for his or her current OHP pro-

# ADMINISTRATIVE RULES

gram, or moving from the BCCM, EXT, GAM, MAA, MAF, OSIPM, REFM, or SAC programs to the OHP program: the last month of the current eligibility (see OAR 461-001-0000) period.

(c) When the Department initiates a redetermination of *eligibility*:

(A) The last month of the current eligibility period if the Department initiates the redetermination by sending a DHS 945 form.

(B) For all cases not covered by paragraph (A) of this subsection, the month the Department initiates a *date of request* (see OAR 461-115-0030).

(d) For an individual joining a *filing group* (see OAR 461-110-0400), the month in which the individual requests medical benefits.

(e) For a late reapplication, the month the Department receives the new application.

(f) For a new applicant or current recipient who is not eligible using the budget month described in subsections (1)(a) to (1)(d) of this rule, any month falling within 45 days after the date of request.

(2) Countable (see OAR 461-001-0000) income is determined as follows:

(a) Income is considered available during a month under OAR 461-140-0040.

(b) Income is not annualized, converted, or prorated.

(c) For a self-employed client, countable self-employment income is determined under OAR 461-145-0920 and 461-145-0930.

(3) Except as provided in section (5) of this rule, the Department calculates the countable income of the financial group (see OAR 461-110-0530) by adding together the income the financial group has already received in the budget month and the income that reasonably may be expected to be received in the budget month.

(4) A change in income or resources during a certification period (see OAR 461-001-0000) does not affect the eligibility of the benefit group (see OAR 461-110-0750) for that certification period.

(5) In the HKC, OHP-CHP, and OHP-OPC programs, when the Department uses a finding made during an ELE determination and the child meets all other HKC, OHP-CHP, or OHP-OPC program nonfinancial eligibility requirements, the standard for the number of eligibility group members determined by the ELA is used to determine eligibility regardless of the need group (see OAR 461-110-0630) size. The countable income of the financial group is the same as the income amount determined by the ELA.

(a) A child is deemed eligible for the HKC, OHP-CHP, or OHP-OPC program as follows:

(A) If the income of the *need group* is below 163 percent of the federal poverty level (FPL) as listed in OAR 461-155-0180, the Department deems the child eligible for OHP-OPC.

(B) If the income of the need group is at or above 163 percent of the FPL but under 201 percent of the FPL, the Department deems the child eligible for OHP-CHP.

(C) If the income of the need group is at or above 201 percent of the FPL, the Department deems the child eligible for HKC.

(b) If the income of the need group is above 301 percent of the FPL, the Department determines eligibility using the standard medical assistance eligibility determination processes.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 414.231

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 38-2010(Temp), f. & cert. ef. 11-1-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 43-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 4-30-11

## 461-160-0430

### Income Deductions; SNAP

(1) Deductions from income are subtracted from countable income (see OAR 461-140-0010) in the following order to determine adjusted income (see OAR 461-001-0000) for the SNAP program:

(a) An *earned income* deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as Work Supplementation wages.

(b) Effective October 1, 2010, a standard deduction of \$142 per month for a benefit group (see OAR 461-110-0750) of one, two, or three individuals. A standard deduction of \$153 for a benefit group of four individuals. A standard deduction of \$179 for a benefit group of five individuals. A standard deduction of \$205 for a benefit group of six or more individuals.

(c) A dependent care deduction for dependent care costs billed to a member of the financial group (see OAR 461-110-0530) and not paid for

through any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the need group (see OAR 461-110-0630) to:

(A) Accept or continue employment;

(B) Seek employment, including a job search that meets the requirements of a case plan (see OAR 461-001-0020); or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for elderly clients and clients who have a disability (see OAR 461-001-0015) in the need group. The deduction is calculated by determining the total of their deductible medical costs (see OAR 461-160-0415) and subtracting \$35. The remainder is the medical deduction.

(e) A deduction for child support payments (including cash medical support) a member of the household makes under a legal obligation to a child not a member of the household group (see OAR 461-110-0210), including payments for the current month and for payments on arrearages. Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

(A) For SNAP clients required to pay room and board in a nonstandard living arrangement (see OAR 461-001-0000), the shelter deduction is:

(i) The cost of room and board, minus the payment standard for the benefit group; or

(ii) The actual room cost, if the client can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other clients, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from countable income. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the filing group has no member who has a disability or is elderly (see OAR 461-001-0015). Effective October 1, 2010 the limit is \$458.

(2) If the client cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the client provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period authorized for processing applications (see OAR 461-115-0210), the benefits for the initial month (see OAR 461-001-0000) are recalculated using the deduction.

Stat. Auth.: ORS 411.816

Stat. Implemented: ORS 411.816 & 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-00, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; 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 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 39-2010(Temp), f. & cert. ef. 11-4-10 thru 5-3-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 43-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 4-30-11

## 461-160-0700

### Use of Income; HKC, OHP

In the HKC and OHP programs, the Department uses income to determine eligibility as follows:

(1) The countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) received and expected to be received in the budget month (see OAR 461-001-0000) is determined under OAR 461-150-0055.

(2) For each member of the need group (see OAR 461-110-0630), the countable income of the financial group from the budget month is compared to the applicable OHP program income standard. If the countable income of the financial group is below the applicable income standard for the need group size and all other financial and non-financial eligibility



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requirements are met, the need group member is eligible for OHP program benefits. If the countable income of the financial group equals or exceeds the applicable OHP program income standard, the need group member is ineligible for OHP program benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 414.231  
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 414.025, 414.231  
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 38-2010(Temp), f. & cert. ef. 11-1-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 43-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 4-30-11

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

**Rule Caption:** Developmental Disability Services Eligibility.

**Adm. Order No.:** SPD 28-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 411-320-0020, 411-320-0080, 411-320-0175

**Rules Repealed:** 411-320-0020(T), 411-320-0080(T), 411-320-0175(T)

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is proposing to permanently amend OAR 411-320-0020, OAR 411-320-0080, and OAR 411-320-0175 relating to developmental disability services eligibility.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

### 411-320-0020

#### Definitions

(1) "24-Hour Residential Program" means a comprehensive residential home or facility licensed by the Division under ORS 443.410 to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) Abuse of a child:

(A) As defined in ORS 419B.005; and

(B) Abuse as defined in OAR 407-045-0260, when a child resides in:

(i) Homes or facilities licensed to provide 24-hour residential services for children with developmental disabilities; or

(ii) Agencies licensed or certified by the Division to provide proctor foster care for children with developmental disabilities.

(b) Abuse of an adult as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event.

(5) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include but are not limited to adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills including but not limited to walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), and making choices (self-direction).

(a) Adaptive behavior is measured by a standardized test administered by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals with developmental disabilities.

(b) "Significant impairment" in adaptive behavior means a composite score of at least two standard deviations below the norm or two or more areas of functioning that are at least two standard deviations below the norm including but not limited to communication, mobility, self-care, socialization, self-direction, functional academics, or self-sufficiency as indicated on a standardized adaptive test.

(6) "Administrative Review" means the formal process that is used by the Division when an individual or an individual's representative is not satisfied with the decision made by the community developmental disability

program or support services brokerage about a complaint involving the provision of services or a service provider.

(7) "Adult" means an individual 18 years or older with developmental disabilities.

(8) "Advocate" means a person other than paid staff who has been selected by the individual, or by the individual's legal representative, to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(9) "Annual Plan" means:

(a) A written summary the services coordinator completes for an individual 18 years or older who is not receiving support services or comprehensive services; or

(b) The written details of the supports, activities, costs, and resources required for a child receiving family support services.

(10) "Assistant Director" means the assistant director of the Division, or that person's designee.

(11) "Care" means supportive services including but not limited to provision of room and board, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. The term "care" is synonymous with "services".

(12) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior, in place of a meaningful behavior or treatment plan.

(13) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(15) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(16) "Community Mental Health and Developmental Disability Program (CMHDDP)" means an entity that operates or contracts for all services for individuals with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems under the county financial assistance contract with the Department.

(17) "Complaint" means a verbal or written expression of dissatisfaction with services or service providers.

(18) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(19) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the Division alone or in combination with any associated employment or community inclusion program regulated by the Division:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an adult in the individual or family home costing more than the individual cost limit for support services.

(c) Comprehensive services do not include support services for adults enrolled in support services brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(20) "County of Origin" means the individual's county of residence, unless a minor, then county of origin means the county where the jurisdiction of the child's guardianship exists.

(21) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(22) "Crisis Diversion Services" mean short-term services provided for up to 90 days, or on a one-time basis, directly related to resolving a crisis, and provided to, or on behalf of, an individual eligible to receive crisis services.

(23) "Crisis Plan" means the community developmental disability program or regional crisis diversion program generated document, serving

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as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under these rules.

(24) "Current Documentation" means documentation relating to an individual's developmental disability in regards to the individual's functioning within the last three years. Current documentation may include but is not limited to annual plans, behavior support plans, educational records, medical assessments related to the developmental disability, psychological evaluations, and adaptive behavior assessments.

(25) "Department" means the Department of Human Services (DHS).

(26) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to other conditions, including but not limited to mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(27) "DHS Quality Management Strategy" means the Department's Quality Assurance Plan that includes the quality assurance strategies for the Division ([http://www.oregon.gov/DHS/spd/qa/app\\_h\\_qa.pdf](http://www.oregon.gov/DHS/spd/qa/app_h_qa.pdf)).

(28) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(29) "Eligibility Determination" means a decision by a community developmental disability program or by the Division regarding a person's eligibility for developmental disability services pursuant to OAR 411-320-0080 and is either a decision that a person is eligible or ineligible for developmental disability services.

(30) "Eligibility Specialist" means an employee of the community developmental disability program or other agency that contracts with the county or Division to determine developmental disability eligibility.

(31) "Entry" means admission to a Division-funded developmental disability service provider.

(32) "Exit" means either termination from a Division-funded developmental disability service provider or transfer from one Division-funded program to another. Exit does not mean transfer within a service provider's program within a county.

(33) "Family Member" means husband or wife, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(34) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(35) "Guardian" means a parent for individuals under 18 years of age, or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(36) "Health Care Provider" means a person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(37) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(38) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing, Contested Case Hearing, and Administrative Hearing.

(39) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as

a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(40) "Imminent Risk" means:

(a) An adult who is in crisis and shall be civilly court-committed to the Department under ORS 427.215 to 427.306 within 60 days without the use of crisis diversion services; or

(b) A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.

(41) "Incident Report" means a written report of any unusual incident involving an individual.

(42) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(43) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(44) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(45) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's plan of care for Medicaid purposes.

(46) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the Individual Support Plan or requested by the individual.

(47) "Informal Adaptive Behavior Assessment" means:

(a) Observations of the adaptive behavior impairments recorded in the individual's progress notes by a services coordinator or a trained eligibility specialist, with at least two years experience working with individuals with developmental disabilities.

(b) A standardized measurement of adaptive behavior such as a Vineland Adaptive Behavior Scale or Adaptive Behavior Assessment System that is administered and scored by a social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals.

(48) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(49) "Intellectual Functioning" means functioning as assessed by a qualified professional using one or more individually administered general intelligence tests.

(50) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(51) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program;

(b) The tribal council in the case of a Native American reservation;

(c) The board of directors of a public or private corporation if the county declines to operate or contract for all or part of a community mental health and developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Division.

(52) "Majority Agreement" means for the purpose of entry, exit, transfer, and annual Individual Support Plan team meetings, that no one member of the Individual Support Plan team has the authority to make decisions for the team unless so authorized by the team process. Service providers, families, community developmental disability programs, advocacy agen-

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cies, or individuals are considered as one member of the Individual Support Plan team for the purpose of reaching majority agreement.

(53) "Management Entity" means the community developmental disability program or private corporation that operates the regional crisis diversion program, including acting as the fiscal agent for regional crisis diversion funds and resources.

(54) "Mandatory Reporter" means any public or private official who:

(a) Comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(b) While acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(55) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

(56) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(57) "Mental Retardation" means significantly sub-average general intellectual functioning defined as intelligence quotient's (IQ's) under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have mental retardation if there is also significant impairment of adaptive behavior as diagnosed and measured by a qualified professional. The adaptive behavior must be directly related to mental retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.

(58) "Monitoring" means the periodic review of the implementation of services identified in the Individual Support Plan or annual summary, and the quality of services delivered by other organizations.

(59) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(60) "OIT" means the Department of Human Services, Office of Investigations and Training.

(61) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(62) "Physical Restraint" means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.

(63) "Physician" means a person licensed under ORS chapter 677 to practice medicine and surgery.

(64) "Physician Assistant" means a person licensed under ORS 677.505 to 677.525.

(65) "Plan of Care" means a written document developed for each individual by the support team using a person-centered approach that describes the supports, services, and resources provided or accessed to address the needs of the individual.

(66) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(67) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the

individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(68) "Psychologist" means:

(a) A person possessing a doctorate degree in psychology from an accredited program with course work in human growth and development, tests, and measurement; or

(b) A state certified school psychologist.

(69) "Psychotropic Medication" means medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(70) "Qualified Professional" means a:

(a) Licensed clinical psychologist (Ph.D., Psy.D.) or school psychologist;

(b) Medical doctor (MD); or

(c) Doctor of osteopathy (DO).

(71) "Region" means a group of Oregon counties defined by the Division that have a designated management entity to coordinate regional crisis and backup services and be the recipient and administration of funds for those services.

(72) "Regional Crisis Diversion Program" means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

(c) Other developmental disability services that the counties comprising the region agree shall be delivered more effectively or automatically on a regional basis.

(73) "Respite" means short-term care and supervision provided to an individual on a periodic or intermittent basis because of the temporary absence of, or need for relief of, the primary care giver.

(74) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(75) "Review" means a request for reconsideration of a decision made by a service provider, community developmental disability program, support services brokerage, or the Division.

(76) "School Aged" means the age at which a child is old enough to attend kindergarten through high school.

(77) "Service Element" means a funding stream to fund program or services including but not limited to foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive services, or family support.

(78) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Division, or other appropriate agency, to provide these services. The term "provider" or "program" is synonymous with "service provider."

(79) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities. The term "case manager" is synonymous with "services coordinator".

(80) "State Training Center" means the Eastern Oregon Training Center.

(81) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(82) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(83) "Support Services Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with developmental disabilities.

(84) "Support Team" means a group, composed of members as determined by an individual receiving services or the individual's legal guardian, that participates in the development of the individual's plan of care.

(85) "These Rules" mean the rules in OAR chapter 411, division 320.



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(86) "Transfer" means movement of an individual from a service site to another service site within a county, administered by the same service provider that has not been addressed within the Individual Support Plan.

(87) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan is developed and approved by the Individual Support Plan team. The transition plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the Individual Support Plan development.

(88) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

(89) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Division, upon written application by the community developmental disability program.

(90) "Volunteer" means any person providing services without pay to individuals receiving case management services.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11

## 411-320-0080

### Application and Eligibility Determination

(1) APPLICATION. The Division required application for developmental disability services must be used.

(A) All applications must be accepted under the following situations:

(A) If the applicant is an adult, they must be an Oregon resident.

(B) If the applicant is a minor child, the legal guardian and the child must be Oregon residents.

(b) The applicant must apply in the county of origin as defined in OAR 411-320-0020.

(c) The application must be completed, signed, and dated before an eligibility determination can be made.

(d) The date the CDDP receives the completed, signed, and dated application is the date of application for developmental disability services.

(e) A new application is required in the following situations:

(A) Following a closure, denial, or termination if the file has been closed for more than 12 months; or

(B) The applicant does not meet all application requirements.

(2) FINANCIAL STATUS. The CDDP must identify whether the applicant receives any unearned income benefits. Adults with no unearned income benefits must be referred to Social Security for a determination of financial eligibility. Minor individuals must be referred to Social Security if it is identified that they may qualify for benefits.

(3) ELIGIBILITY SPECIALIST. Each CDDP must identify at least one qualified eligibility specialist who shall act as a designee of the Division for purposes of making an eligibility determination. The eligibility specialist must meet performance qualifications and training expectations for determining developmental disability eligibility according to OAR 411-320-0030.

(4) QUALIFIED PROFESSIONAL DIAGNOSIS. For the purpose of this rule, diagnosis and evaluation information must be completed by qualified professionals qualified to make a diagnosis of developmental disabilities as defined in OAR 411-320-0020, in accordance with the American Association on Mental Deficiency, 1977.

(5) ELIGIBILITY FOR MENTAL RETARDATION.

(a) A history demonstrating mental retardation, as defined in OAR 411-320-0020, must be in place by the individual's 18th birthday. Diagnosing mental retardation is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests administered by a qualified professional as described in section (4) of this rule.

(A) For individuals who have consistent IQ results of 65 and under, no adaptive behavior assessment, as defined in OAR 411-320-0020, may be needed if current documentation supports eligibility.

(B) For individuals who have IQ results of 66-75, verification of mental retardation requires an adaptive behavior assessment as defined in OAR 411-320-0020.

(b) The adaptive impairments must be directly related to mental retardation and cannot be primarily attributed to other conditions, including but

not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(c) The condition or impairment must be expected to last indefinitely.

(6) ELIGIBILITY FOR OTHER DEVELOPMENTAL DISABILITIES.

(a) A history of a developmental disability other than mental retardation must be in place prior to the individual's 22nd birthday. IQ scores are not used in verifying the presence of a non-mental retardation developmental disability. Diagnosing a developmental disability requires a medical or clinical diagnosis of a developmental disability with significant impairment in adaptive behavior, as defined in OAR 411-320-0020, related to the diagnosis.

(b) The adaptive impairments must be directly related to the developmental disability and cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(c) The condition or impairment must be expected to last indefinitely.

(7) ELIGIBILITY FOR CHILDREN. Eligibility for children is always provisional. This means eligibility may change in the future when new information is obtained. Eligibility documentation for children must be no more than three years old.

(a) Eligibility for children under 7 years of age must include:

(A) Standardized testing by a qualified professional or master's level trained early intervention evaluation specialist that demonstrates at least two standard deviations below the norm in two or more areas of adaptive behavior including but not limited to:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; OR

(B) A medical statement by a licensed medical practitioner of a neurological condition or syndrome that originates in and directly affects the brain and causes or is likely to cause significant impairment in at least two or more areas of adaptive behavior including but not limited to:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction.

(C) The condition or syndrome cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(D) The condition or impairment must be expected to last indefinitely.

(b) Eligibility for school aged children.

(A) Eligibility for school aged children must include:

(i) School age documents that are no more than three years old.

(ii) Documentation of mental retardation as described in section (5) of this rule; or

(iii) A diagnosis and documentation of a developmental disability as described in section (6) of this rule.

(B) School aged eligibility may be completed on individuals:

(i) Who are at least 5 years old and who have had school aged testing completed;

(ii) Up to age 18 for individuals who are provisionally eligible based on a condition of mental retardation; or

(iii) Up to age 22 for individuals who are provisionally eligible based on a condition of a developmental disability other than mental retardation.

(8) ELIGIBILITY FOR ADULTS. Eligibility for adults must include:

(a) Documents that are no more than three years old for individuals under 21 years of age.

(b) Documents based on information obtained after the individual's 17th birthday, for individuals 21 years of age and older.

(c) Documentation of mental retardation as described in section (5) of this rule. Adult intellectual functioning assessments are not needed if the individual has:

(A) Consistent IQ results of 65 or less;

(B) Functioning that is directly related to mental retardation; and

(C) Current documentation that supports eligibility; OR

(d) A diagnosis and documentation of a developmental disability as described in section (6) of this rule.

(9) ABSENCE OF DATA IN DEVELOPMENTAL YEARS.

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(a) In the absence of sufficient data during the developmental years, current data may be used if:

(A) There is no evidence of head trauma;

(B) There is no evidence or history of significant mental or emotional disorder; or

(C) There is no evidence or history of substance abuse.

(b) If there is evidence or a history of head trauma, significant mental or emotional disorder, or substance abuse, then a clinical impression by a qualified professional regarding how the individual's functioning may be impacted by the identified condition must be obtained in order to determine if the individual's significant impairment in adaptive behavior is directly related to a developmental disability and not primarily related to a head trauma, significant mental or emotional disorder, or substance abuse.

## (10) REDETERMINATION OF ELIGIBILITY.

(a) The CDDP must notify the individual or the individual's representative anytime that a redetermination of eligibility is needed. Notification of the redetermination and the reason for the review of eligibility must be in writing and sent prior to the eligibility redetermination.

(b) Eligibility for school age children must be redetermined no later than age 7.

(c) Eligibility for adults must be redetermined by age 18 for mental retardation and by age 22 for developmental disabilities other than mental retardation.

(d) Any time there is evidence that contradicts the eligibility determination, the Division or its designee may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(e) Eligibility must be redetermined using the criteria established in this rule.

(A) IQ testing, completed within the last three years, is not needed if the individual has:

(i) Consistent IQ results of 65 or less;

(ii) Functioning continues to be directly related to mental retardation; and

(iii) Current documentation continues to support eligibility.

(B) A current medical or clinical diagnosis of a developmental disability may not be needed if:

(i) There is documentation of a developmental disability by a qualified professional, as defined in OAR 411-320-0020;

(ii) Functioning continues to be directly related to the developmental disability; and

(iii) Current documentation continues to support eligibility.

(C) An informal adaptive behavior assessment, as defined in OAR 411-320-0020, may be completed if all of the following apply:

(i) An adaptive behavior assessment is required in order to redetermine eligibility;

(ii) An adaptive behavior assessment has already been completed by a qualified professional; and

(iii) The individual has obvious significant adaptive impairments in adaptive behavior.

## (11) SECURING EVALUATIONS.

(a) In the event that the services coordinator has exhausted all local resources to secure the necessary evaluations for an eligibility determination, the Division or its designee shall assist in obtaining additional testing if required to complete the eligibility determination.

(b) In the event there is evidence that contradicts the information that an eligibility determination was based upon, the Division or its designee, may obtain additional information including securing an additional evaluation for clarification purposes.

(12) PROCESSING ELIGIBILITY DETERMINATION. The CDDP in the county of origin is responsible for making the eligibility determination.

(a) The CDDP shall work in collaboration with the individual to gather historical records related to the individual's developmental disability.

(b) The CDDP must process eligibility for developmental disability services in the following time frames.

(A) The CDDP must complete an eligibility determination and issue a Notice of Eligibility Determination within 90 calendar days of the date that the application for services is received by the CDDP, except in the following circumstances:

(i) The CDDP may not make an eligibility determination because the individual or the individual's representative fails to complete an action;

(ii) There is an emergency beyond the CDDP's control; or

(iii) More time is needed to obtain additional records by the CDDP, the individual, or the individual's representative.

(B) The process of making an eligibility determination may be extended up to 90 calendar days by mutual agreement among all parties. Mutual agreement may be in verbal or written form. The CDDP must document in the individual's record the reason for the delay and type of contact made to verify the individual's agreement to an extension.

(c) The CDDP must make an eligibility determination unless the following applies and is documented in the individual's progress notes:

(A) The individual or the individual's representative voluntarily withdraws the individual's application;

(B) The individual dies; or

(C) The individual cannot be located.

(d) The CDDP may not use the time frames established in subsection (b) of this section as:

(A) A waiting period before determining eligibility; or

(B) A reason for denying eligibility.

(13) NOTICE OF ELIGIBILITY DETERMINATION. The CDDP, based upon a review of the documentation used to determine eligibility, must issue a written Notice of Eligibility Determination to the individual and to the individual's representative.

(a) The Notice of Eligibility Determination must be sent or hand delivered within:

(A) Ten working days of making an eligibility redetermination.

(B) Ten working days of making an eligibility determination or 90 calendar days of receiving an application for services, whichever comes first.

(b) The notice must be on forms prescribed by the Division. The notice must include:

(A) The specific date the notice is mailed or hand delivered;

(B) The effective date of any action proposed;

(C) The eligibility determination;

(D) The rationale for the eligibility determination, including what reports, documents, or other information that were relied upon in making the eligibility determination;

(E) The specific rules that were used in making the eligibility determination;

(F) Notification that the documents relied upon may be reviewed by the individual or the individual's representative; and

(G) Notification that if the individual or the individual's representative disagrees with the Division's eligibility determination, the individual or the individual's representative has the right to request a hearing on the individual's behalf, as provided in ORS chapter 183 and OAR 411-320-0175 including:

(i) The timeline for requesting a hearing;

(ii) Where and how to request a hearing;

(iii) The right to receive assistance from the CDDP in completing and submitting a request for hearing; and

(iv) The individual's right to receive continuing services at the same level during the hearing and at the request of the individual including:

(I) Notification of the time frame within which the individual must request continuing services;

(II) Notification of how and where the individual must submit a request for continuing services; and

(III) Notification that the individual may be required to repay the state for any services received during the hearing process if the determination of ineligibility is upheld in a final order.

(14) REQUESTING A HEARING. An individual or an individual's representative may request a hearing as described in OAR 411-320-0175 if they disagree with the eligibility determination or redetermination made by the CDDP. The request for a hearing must be made by completing the DD Administrative Hearing Request (SDS 0443DD) within the timeframe identified on the Notice of Eligibility Determination.

(15) TRANSFERABILITY OF ELIGIBILITY DETERMINATION. An eligibility determination made by one CDDP must be honored by another CDDP when an individual moves from one county to another.

(a) The receiving CDDP must notify the individual, on forms prescribed by the Division, that a transfer of services to a new CDDP has taken place;

(b) The receiving CDDP must continue services for the individual as soon as it is determined that the individual is residing in the county of the receiving CDDP; and

(c) The receiving CDDP has verification of developmental disability eligibility in the form of a:

(A) Statement of an eligibility determination;

(B) Notification of eligibility determination;

(C) Evaluations and assessments supporting eligibility; or

# ADMINISTRATIVE RULES

(D) In the event that the items in subsection (c)(A-C) above cannot be located, written documentation from the sending CDDP verifying eligibility and enrollment in developmental disability services may be used. This may include documentation from the Division's electronic payment system.

(d) If the receiving CDDP receives information that suggests the individual is not eligible for developmental disability services, the CDDP that determined the individual was eligible for developmental disability services may be responsible for the services authorized on the basis of that eligibility determination.

(e) If an individual submits an application for developmental disability services and discloses that they have previously received developmental disability services in another CDDP, and the termination of case management services as described in OAR 411-320-0100(3) occurred within the past 12 months, the eligibility determination from the other CDDP shall transfer as outlined in this section of the rule.

Stat. Auth.: ORS 409.050, 410.070, & 430.640

Stats. Implemented: ORS 183.415, 427.005, 427.007, & 430.610 – 430.670

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11

## 411-320-0175

### Hearings for Developmental Disability Services Eligibility Determination

The Department follows the Attorney General's Model Rules OAR 137-003-0501 to 137-003-0700 and ORS chapter 183 for the conduct of hearings in developmental disability eligibility determination.

(1) DEFINITIONS. As used in this rule:

(a) "Administrative Law Judge" means a professional hearing officer, employed by the Employment Division, Office of Administrative Hearings, who presides over hearings and issues a final order.

(b) "Claimant" means a person who has requested a hearing or who is scheduled for a hearing.

(c) "Department Hearing Representative" means a person authorized to represent the Department in the hearing.

(d) "Good Cause" means a circumstance beyond the control of the claimant and claimant's representative.

(e) "Representative" means any adult chosen by the claimant to represent them at the hearing.

(f) A "Request for Hearing" is a written request by the claimant or the claimant's representative that the claimant wishes to appeal an eligibility determination.

(2) HEARING REQUESTS. A claimant has the right to a hearing, as provided in ORS chapter 183, if the claimant disagrees with the Department's eligibility determination.

(a) The request for a hearing must be in writing on the DD Administrative Hearing Request (SDS 0443DD) and signed by the claimant or the claimant's representative. The signed request (SDS 0443DD) must be received by the Department within 45 days from the date of the Department's Notice of Eligibility Determination.

(b) Upon request by the claimant, the CDDP shall assist the claimant in completing the hearing request form.

(c) A late hearing request may be granted when the claimant or the claimant's representative has good cause.

(3) CONTINUING SERVICES PENDING A HEARING OUTCOME.

(a) When an individual is determined to be no longer eligible following a redetermination of their eligibility, the individual has the right to request continuing services during the hearing process.

(b) The request for continuing services must be indicated by:

(A) Checking the appropriate box on the DD Administrative Hearing Request (SDS 0443DD); or

(B) Communicating directly with the local CDDP, support services brokerage, or the Department that services remain the same.

(c) To qualify for continuing services, the DD Administrative Hearing Request (SDS 0443DD) and request for continuing services, must be received by the effective date identified on the Notice of Eligibility Determination or by 10 days following the date of the notice, whichever is later.

(d) The Department shall determine if there is good cause following receipt of a late request for continuing services.

(e) If the hearing is not in the individual's favor, the individual may be required to pay back any benefits received during the hearing process.

(4) INFORMAL CONFERENCE.

(a) The Department representative and the claimant or the claimant's representative may have an informal conference, without the presence of

the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant to settle the matter;

(B) Ensure the claimant or the claimant's representative understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant or the claimant's representative an opportunity to review the information that is the basis for the action;

(D) Inform the claimant or the claimant's representative of the rules that serve as the basis for the contested action;

(E) Give the claimant or the claimant's representative and the Department the chance to correct any misunderstanding of the facts;

(F) Give the claimant or the claimant's representative an opportunity to provide additional information to the Department; and

(G) Give the Department an opportunity to review its action.

(b) The claimant or the claimant's representative may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if it facilitates the hearing process.

(c) The Department may provide the claimant the relief sought at any time before the final order is issued.

(5) REPRESENTATION.

(a) A representative may be chosen by the claimant to represent their interests during a pre-hearing conference and hearing.

(b) Division employees are authorized to appear as a witness on behalf of the Department for hearings.

(c) Hearings are not open to the public and are closed to non-participants, except non-participants may attend subject to the claimant's consent.

(6) WITHDRAWAL OF HEARING. A claimant or the claimant's representative may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date the Department or the Office of Administrative Hearings receives it. The Department shall issue a final order confirming the withdrawal to the last known address of the claimant. The claimant or the claimant's representative may cancel the withdrawal up to 10 working days following the date the final order is issued.

(7) DISMISSAL FOR FAILURE TO APPEAR. A hearing request is dismissed by order when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the claimant's representative upon a showing that the claimant or the claimant's representative was unable to attend the hearing or unable to request a postponement for reasons beyond the claimant's control.

(8) FINAL ORDER.

(a) In a hearing, the administrative law judge is authorized to enter a final order on behalf of the Department without first issuing a proposed order unless the Department has specifically revoked authority.

(b) A final order shall be issued in compliance with OAR 137-003-0665 or the case otherwise resolved no later than 90 days following the request for hearing.

(c) The final order is effective immediately upon being signed or as otherwise provided in the order.

(d) A petition by a claimant for reconsideration or rehearing must be filed with the entity who issued the final order.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.670

Hist.: SPD 9-2009, f. & cert. ef. 7-13-09; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11

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**Rule Caption:** Adult Foster Homes for Individuals with Developmental Disabilities – CPR and First Aid Certification.

**Adm. Order No.:** SPD 29-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 411-360-0070

**Rules Repealed:** 411-360-0070(T)

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is permanently amending OAR 411-360-0070 to include language that was inadvertently removed in the July 1, 2010 amendment relating to CPR and First Aid certification for



# ADMINISTRATIVE RULES

adult foster homes providing services to individuals with developmental disabilities.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-360-0070

### Classification of Adult Foster Homes for Persons with Developmental Disabilities

A Provisional, Limited, Level 1, Level 2B, or Level 2M license may be issued by the Division based upon the qualifications of the applicant and the resident manager (if applicable) and compliance with the following requirements.

(1) **PROVISIONAL AFH-DD LICENSE.** A Provisional AFH-DD license may be issued by the Division if:

(a) There is an emergency situation where the current licensed provider is no longer overseeing the operation of the AFH-DD.

(b) The applicant meets the standards of OAR 411-360-0110(1)(a-f)(h-k).

(c) A provisional license is valid for 60 days from the date of issue and is not renewable.

(2) **LIMITED AFH-DD LICENSE.** A Limited AFH-DD license may be issued by the Division if:

(a) The applicant meets the qualifications listed in OAR 411-360-0110(1)(a-k) and the home meets the requirements listed in OAR 411-360-0130.

(b) The applicant acquires any additional training necessary to meet the specific needs of the individual.

(c) The license shall be limited to the care of the named person only and the individual receiving care is named on the license.

(3) **LEVEL 1 AFH-DD LICENSE.** A Level 1 AFH-DD license may be issued by the Division if the applicant and resident manager (if applicable):

(a) Meet the qualifications listed in OAR 411-360-0110 and completes the training requirements outlined in OAR 411-360-0120; and

(b) The home and applicant are in compliance with OAR 411-360-0080.

(4) **LEVEL 2B AFH-DD LICENSE.** If a provider serves or intends to serve more than one individual who exhibits behavior that pose a significant danger to the individual or others, the provider must be licensed as a Level 2B AFH-DD.

(a) A Level 2B AFH-DD license may be issued by the Division only if the applicant and resident manager (if applicable) has met the criteria for a Level 1 AFH-DD license and in addition, has met the following criteria:

(A) Has the equivalent of one year of full-time experience in providing direct care to individuals with developmental disabilities;

(B) Has two years of full time experience providing care and support to individuals who exhibit behavior that poses significant risk to the individual or others as described in subsection (4)(a)(E)(i-iv) of this section;

(C) Has completed OIS-G, OIS-IF, or OIS-C certification by a state approved OIS trainer;

(D) Has completed additional hours of advanced behavior intervention training per year, based on the support needs of the individual, if available from the Division;

(E) Has been certified in CPR and First Aid by a recognized training agency; and

(F) Intends to provide care and support to more than one individual who exhibit behavior that poses a significant danger to the individual. Examples include but are not limited to:

(i) Acts or history of acts that have caused injury to self or others requiring medical treatment;

(ii) Use of fire or items to threaten injury to persons or damage to property;

(iii) Acts that cause significant damage to homes, vehicles, or other properties; or

(iv) Actively searching for opportunities to act out thoughts that involve harm to others.

(b) A Level 2B AFH-DD provider must have a Transition Plan for each individual upon entry and a Behavior Support Plan within 60 days of placement that:

(A) Emphasizes the development of the functional alternative and positive approaches to behavior intervention;

(B) Uses the least intervention possible;

(C) Ensures that abusive or demeaning intervention shall never be used; and

(D) Is evaluated by the ISP Team through review of specific data at least every six months to assess the effectiveness of the procedures.

(c) A Level 2B AFH-DD provider may not employ a resident manager or substitute caregiver who does not meet or exceed the training classification standard for the AFH-DD.

(d) The Level 2B AFH-DD may not admit individuals whose care needs exceed the licensed classification of the AFH-DD home and may not admit individuals without prior approval of the CDDP.

(5) **LEVEL 2M AFH-DD LICENSE.**

(a) A provider must be licensed as a Level 2M AFH-DD if the provider serves or intends to provide care and support to more than one individual who has a medical condition that is serious and could be life threatening. Examples include but are not limited to:

(A) Brittle diabetes or diabetes not controlled through medical or physical interventions;

(B) Significant risk of choking or aspiration;

(C) Physical, intellectual, or mental limitations that render the individual totally dependent on others for access to food or fluids; or

(D) Mental health or alcohol or drug problems that are not responsive to treatment interventions.

(b) A Level 2M AFH-DD license may be issued by the Division only if the applicant or resident manager has met the requirements for a Level 1 AFH-DD and meets the following additional criteria:

(A) Has the equivalent of one year of full-time experience in providing direct care to individuals with developmental disabilities;

(B) Is a health care professional such as a registered nurse or licensed practical nurse, or has the equivalent of two years full-time experience providing care and support to individuals who have a medical condition that is serious and could be life-threatening as described in subsection (5)(b)(E)(i-v) of this section;

(C) Has been certified in CPR and First Aid by a recognized training agency;

(D) Can provide current satisfactory references from at least two medical professionals, such as a physician, physician's assistant, nurse practitioner, or registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver;

(E) Has fulfilled a minimum six of the twelve hours of annual training requirements in specific medical training; and

(F) Intends to provide care and support to more than one individual who has a medical condition that is serious and could be life threatening. Examples include but are not limited to:

(i) Brittle diabetes or diabetes not controlled through medical or physical interventions;

(ii) Significant risk of choking or aspiration;

(iii) Physical, intellectual, or mental limitations that render the individual totally dependent on others for access to food or fluids;

(iv) Mental health or alcohol or drug problems that are not responsive to treatment interventions; and

(v) A terminal illness that requires hospice care.

(c) A Level 2M AFH-DD provider must have a Transition Plan for each individual upon entry and develop, with the ISP Team, a Medical Support Plan within 30 days of placement or whenever there is a change in health status for each individual who has a medical condition that is serious and could be life threatening as described in subsection (5)(b)(E)(i-v) of this section.

(d) A provider with a 2M licensed AFH-DD may not employ a resident manager or substitute caregiver who does not meet or exceed the training classification standard for a 2M AFH-DD.

(e) The 2M AFH-DD may not admit individuals whose care needs exceed the licensed classification of the AFH-DD home and may not admit individuals without prior approval of the CDDP.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD

22-2010(Temp), f. & cert. ef. 8-27-10 thru 2-22-11; SPD 29-2010, f. 12-29-10, cert. ef. 1-1-

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**Rule Caption:** Adult Foster Homes.

**Adm. Order No.:** SPD 30-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 411-050-0412

**Rules Repealed:** 411-050-0499

# ADMINISTRATIVE RULES

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is permanently updating two rules relating to adult foster homes:

- OAR 411-050-0412 (Criminal Records Check) to provide clarification; and
- OAR 411-050-0499 (Clackamas County-Issued Adult Foster Home License, Transition to State Licensing) as the rule will no longer be effective after December 31, 2010.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-050-0412

### Criminal Records Check

(1) All subject individuals must have approved criminal records checks and maintain the approval in accordance with these rules and OAR 407-007-0200 to 407-007-0370, Criminal Records Check Rules:

- Annually;
- Prior to a subject individual's change in position (i.e., changing from substitute caregiver to resident manager); and
- Prior to working in another home, regardless of whether the employer was the same or not, unless section (2) of this rule applies.

(2) **PORTABILITY OF CRIMINAL RECORDS CHECK APPROVAL.** A subject individual may be approved to work in multiple homes within the jurisdiction of the local Division. The Department's Background Check Request form must be completed by the subject individual to show intent to work at various adult foster homes within the local Division's jurisdiction.

(3) On or after July 28, 2009, no licensee, licensee applicant, or employee of the licensee shall be approved who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(4) Section (3) of this rule does not apply to:

- Employees of the licensee who were hired prior to July 28, 2009 if they continue employment in the same position; or
- Any subject individual who is an occupant of the home but is neither a licensee nor a caregiver.

(5) The licensee must have written verification from the Division that the required criminal records checks have been completed for all subject individuals. (See OAR 411-050-0444(6)(a)(A))

(6) All subject individuals must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The licensee must notify the Division or designee within 24 hours.

(7) The Division must provide for the expedited completion of a criminal records check for the state of Oregon when requested by a licensed provider because of an immediate staffing need.

Stat. Auth.: ORS 181.537, 410.070, 443.004, & 443.735  
Stats. Implemented: ORS 181.537, 443.004, & 443.735  
Hist.: SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 1-2010(Temp), f. & cert. ef. 3-11-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 30-2010, f. 12-29-10, cert. ef. 1-1-11

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**Rule Caption:** Personal Care Services (Housekeeping).

**Adm. Order No.:** SPD 31-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 411-034-0010, 411-034-0020, 411-304-0035

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is permanently amending three state plan personal care services rules in OAR chapter 411, division 034 to remove references to personal care services provided to individuals due to a mental health condition. The rules for personal care services for individuals with a mental health condition were adopted by the Addictions and Mental Health Division on August 25, 2010 in OAR 309-016-0690 to 309-016-0725.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-034-0010

### Definitions

As used in these rules, unless the context demands otherwise, the following definitions apply:

(1) "Assistance" means the individual requires help from another person with personal assistance services or supportive services as described in OAR 411-034-0020. This help may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance as defined in OAR

411-015-0005(5). It may also require verbal reminding to complete one of the tasks described in OAR 411-034-0020.

(2) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any task described in OAR 411-034-0020. Assistive devices include the use of service animals, general household items, or furniture to assist the individual.

(3) "Case Management" means those functions, performed by a case manager or service coordinator including determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of personal assistance and supportive services to the individual.

(4) "Case Manager" or "Service Coordinator" means a Department employee or an employee of a designee who is responsible for service eligibility, assessment, planning, service authorization and implementation, and evaluation of the effectiveness of the state plan personal care services.

(5) "Contracted In-Home Care Agency" means an entity (described in OAR chapter 333, division 536) that contracts with the Seniors and People with Disabilities Division to provide personal care services to individuals served by the Department under Title XIX.

(6) "Cost Effective" means being responsible and accountable with Department resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices may include other programs available from the Department, the utilization of assistive devices, natural supports, architectural modifications, and alternative service resources (defined in OAR 411-015-0005). Less costly alternatives may include resources not paid for by the Department.

(7) "Delegated Nursing Task" means a task, normally requiring the education and license of a registered nurse (RN) and within the RN scope of practice to perform, that an RN authorizes an unlicensed person (defined in OAR 851-047-0010) to provide in selected situations. In accordance with OAR 851-047-0000, OAR 851-047-0010, and OAR 851-047-0030, the delegation of a nursing task is a written authorization that includes RN assessment of the specific eligible individual, evaluation of the unlicensed person's ability to perform a specific task, teaching the task, and supervision and re-evaluation of the individual and the unlicensed person at regular intervals.

(8) "Department" means the Department of Human Services.

(9) "Designee" means any organization with which the Department contracts or has an interagency agreement.

(10) "Division" means the following divisions or contractors with the Department:

- Addictions and Mental Health Division (AMHD);
- Seniors and People with Disabilities Division (SPD) and its subdivision, Developmental Disabilities Services;
- Area Agencies on Aging (AAA); and
- Children, Adults, and Families Division (CAF) and its subdivision Self-Sufficiency Programs (SSP).

(11) "Fiscal Improprieties" means the personal care attendant committed financial misconduct involving the individual's money, property, or benefits. Improprieties include but are not limited to financial exploitation, borrowing money from the individual, taking the individual's property or money, having the individual purchase items for the provider, forging the individual's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(12) "Homecare Worker" means a provider as described in OAR 411-031-0040, that provides either hourly or live-in services to eligible individuals and is employed by the individual. The term includes client-employed providers that provide state plan personal care services to seniors and people with physical disabilities. The term does not include personal care attendants enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(13) "Individual" means the person applying or determined eligible for state plan personal care services through the Department.

(14) "Lacks the Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means the personal care attendant does not possess the skills to perform services needed by individuals served by the Department. The personal care attendant may not be physically, mentally, or emotionally capable of providing services to individuals with developmental disabilities or mental or emotional disorders. Their lack of skills may put individuals at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the individual.

(15) "Legally Responsible Relative" means the parent or step-parent of an eligible minor child, a spouse, or other family member who has legal

# ADMINISTRATIVE RULES

custody or legal guardianship according to ORS 125.005, 125.300, 125.315, and 125.320.

(16) "Natural Supports" or "Natural Support System" means the resources available to an individual from their relatives, friends, significant others, neighbors, roommates, and the community. Services provided by natural supports are resources not paid for by the Department.

(17) "Ostomy" as used in these rules, means assistance that an individual needs with a colostomy, urostomy, or ileostomy tube or opening used for elimination.

(18) "Personal Assistance Services" means those functional activities described in OAR 411-034-0020 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication and oxygen management, and delegated nursing tasks that an individual requires for continued well-being.

(19) "Personal Care Attendant" means a provider who is enrolled through the Department with an individual Medicaid provider number to provide state plan personal care services, as described in these rules, to individuals served by Developmental Disabilities Services.

(20) "Provider" or "Qualified Provider" means the person who actually performs the state plan personal care services and meets the description cited in OAR 411-034-0050.

(21) "Provider Enrollment" means the authorization to work as a provider employed by the eligible individual, for the purpose of receiving payment for services authorized by the Department. Provider enrollment includes the issuance of a Medicaid provider number.

(22) "Service Need" means the assistance with personal assistance services and supportive services that an individual requires from another person.

(23) "Service Plan" or "Service Authorization" means the written plan of care for the individual that identifies:

- (a) The qualified provider who shall deliver the authorized services;
- (b) The date when the provision of services shall begin; and
- (c) The maximum monthly hours of personal assistance services and supportive services authorized by the case manager or designee.

(24) "State Plan Personal Care Services" means the assistance provided with personal assistance services and supportive services as described in OAR 411-034-0020.

(25) "Sub-Acute Care Facility" means a care center or facility that provides short-term rehabilitation and complex medical services to a patient with a condition that prevents the patient from being discharged home yet the patient does not require acute hospital care.

(26) "These Rules" mean the Oregon Administrative Rules in chapter 411, division 034.

Stat. Auth.: ORS 410.020 & 410.070

Stats. Implemented: ORS 410.020, 410.070, 410.710 & 411.675

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SPD 31-2010, f. 12-29-10, cert. ef. 1-1-11

## 411-034-0020

### Scope of Services

(1) State plan personal care services are essential services performed by a qualified provider, which enable an individual to move into or remain in his or her own home.

(a) Services are provided directly to the eligible individual, and are not meant to provide respite or other services to the individual's support system. Services may not be implemented for the purpose of benefiting other family members or the household in general.

(b) The extent of the services may vary, but the number of hours is limited to a maximum of 20 hours of services per month per eligible individual.

(2) Personal assistance services include:

(a) Basic personal hygiene — providing or assisting an individual with such needs as bathing (tub, bed bath, shower), washing hair, grooming, shaving, nail care, foot care, dressing, skin care, mouth care, and oral hygiene;

(b) Toileting, bowel, and bladder care -- assisting to and from bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, cleansing the individual or adjusting clothing related to toileting, emptying catheter drainage bag or assistive device, ostomy care, or bowel care;

(c) Mobility, transfers, repositioning — assisting the individual with ambulation or transfers with or without assistive devices, turning the individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(d) Nutrition — preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(e) Medication and oxygen management — assisting with ordering, organizing, and administering oxygen or prescribed medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring for choking while taking medications, assisting with the administration of oxygen, maintaining clean oxygen equipment, and monitoring for adequate oxygen supply;

(f) Delegated nursing tasks as defined in OAR 411-034-0010.

(3) When any of the services listed in section (2) of this rule are essential to the health, safety, and welfare of the individual and that individual is receiving a personal assistance service paid by the Department, the following supportive services may also be provided:

(a) Housekeeping tasks necessary to maintain the eligible individual in a healthy and safe environment, including cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and gathering and washing soiled clothing and linens. Only the housekeeping activities related to the eligible individual's needs may be considered in housekeeping;

(b) Arranging for necessary medical appointments including help scheduling appointments and arranging medical transportation services (described in OAR chapter 410, division 136), assistance with mobility, and transfers or cognition in getting to and from appointments or to an office within a medical clinic or center;

(c) Observing the individual's health status and reporting any significant changes to physicians, health care professionals, or other appropriate persons;

(d) First aid and handling of emergencies, including responding to medical incidents related to conditions such as seizures, spasms, or uncontrollable movements where assistance is needed by another person, or responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response; and

(e) Cognitive assistance or emotional support provided to an individual by another person due to confusion, dementia, behavioral symptoms, or mental or emotional disorders. This support includes helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive symptoms.

(4) Payment may not be made for any of the following services, which are excluded under these rules:

- (a) Shopping;
- (b) Transportation;
- (c) Money management;
- (d) Mileage reimbursement;
- (e) Social companionship;
- (f) Day care, adult day services (described in OAR chapter 411, division 066), respite, or baby-sitting services;
- (g) Home delivered meals (described in OAR chapter 411, division 040) funded by Medicaid and provided to individuals by an organization that holds a provider agreement with the Department. Meals prepared by homecare workers or personal care attendants are not considered home delivered meals;

- (h) Care, grooming, or feeding of pets or other animals; or
- (i) Yard work, gardening, or home repair.

Stat. Auth.: ORS 409.010, 410.020, 410.070 & 410.608

Stats. Implemented: ORS 409.010, 410.020, 410.070 & 410.608

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 9-2005, f. & cert. ef. 7-1-05; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SPD 31-2010, f. 12-29-10, cert. ef. 1-1-11

## 411-034-0035

### Where Individuals Are Served

(1) Individuals eligible for state plan personal care services as described in OAR 309-016-0690 must apply through the local community mental health program or agency contracted with AMHD.

(2) Individuals eligible for or receiving developmental disabilities case management services or other services through Developmental Disabilities Services must apply for state plan personal care services through the local community developmental disability program or through the local support service brokerage.

(3) Individuals eligible for or receiving case management services from a Senior and People With Disabilities (SPD) or Area Agency on Aging (AAA) office serving seniors and persons with physical disabilities, must apply for state plan personal care services through the local SPD or AAA



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office that provides Medicaid programs to seniors or persons with physical disabilities.

(4) Individuals receiving benefits through Self-Sufficiency Programs must apply for state plan personal care services through the local SPD or AAA office. SPD/AAA shall be responsible for service assessment and for any planning and payment authorization for state plan personal care services, if the applicant is determined eligible.

Stat. Auth.: ORS 409.010, 410.020, 410.070, 410.608 & 411.116  
Stats. Implemented: ORS 410.020, 410.070, 410.608, 410.710 & 411.116  
Hist.: SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04; SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SPD 31-2010, f. 12-29-10, cert. ef. 1-1-11

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**Department of Justice**  
**Chapter 137**

**Rule Caption:** Calculating child support when all children not with a parent.

**Adm. Order No.:** DOJ 18-2010

**Filed with Sec. of State:** 12-20-2010

**Certified to be Effective:** 1-4-11

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 137-050-0700

**Rules Repealed:** 137-050-0700(T)

**Subject:** This rule is amended to clarify how support should be calculated when some minor children or one minor child of the parties reside with a parent, and another minor child or children are not with either parent.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

**137-050-0700**

**General Provisions**

(1) ORS 25.270 through ORS 25.280 require that child support be calculated according to a formula. The formula is known as the “Oregon Child Support Guidelines” and is contained in OAR 137-050-0700 through OAR 137-050-0765 and in the “Obligation Scale” which is located in the appendix.

(2) Any change to the guidelines applies to all judicial or administrative actions which are pending as of the date of the change or initiated thereafter.

(3) Changes to these rules do not constitute a substantial change in circumstances for purposes of modifying a support order.

(4) “Pending” as used in section (2) means any matter that has been initiated before the effective date of a rule change but requires amendment, modification or hearing before a final judgment can be entered.

(5) The calculation instructions in OAR 137-050-0710 apply when at least one minor child for whom support is being calculated lives with a parent. If none of the minor children for whom support is being calculated lives with a parent, calculate each parent’s obligation separately. For the “other parent” in these single-parent calculations, use the same income, spousal support, union dues and additional children as for the parent whose obligation is being calculated. Include the caretaker’s child care costs, if any. Do not include any other information for the “other parent”.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345  
Stats. Implemented: ORS 25.270 - 25.290  
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 5-2010(Temp), f. & cert. ef. 2-12-10 thru 8-10-10; DOJ 11-2010, f. & cert. ef. 7-1-10; DOJ 15-2010(Temp), f. & cert. ef. 10-1-10 thru 3-22-11; DOJ 18-2010, f. 12-20-10, cert. ef. 1-4-11

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**Rule Caption:** Modifying child support orders.

**Adm. Order No.:** DOJ 19-2010

**Filed with Sec. of State:** 12-20-2010

**Certified to be Effective:** 12-27-10

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 137-055-3430

**Rules Repealed:** 137-055-3430(T)

**Subject:** OAR 137-055-3430 is amended to clarify criteria for modifying child support orders. Additionally, the rule is amended to clarify when the Child Support Program will process a modification request without regard as to whether the new calculation is in “substantial compliance” (\$50 or 15%, whichever is less) with the child support guidelines.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

**137-055-3430**

**Substantial Change in Circumstance Review and Modification of Child Support Order Amounts**

(1) For purposes of this rule:

(A) The definitions provided in ORS 25.321, OAR 137-050-0750 and OAR 137-055-3420 apply;

(b) A “temporary modification” is an order entered under ORS 416.425(13), which suspends and temporarily modifies a support order based on a party’s employment-related change of income; and

(c) “Employment-related change of income” includes but is not limited to reduced work hours, unpaid furloughs, loss of job and wage reductions. Employment-related change of income does not include a voluntary reduction of income or self-imposed curtailment of earning capacity, if it is shown that such action was not taken in good faith but was for the primary purpose of avoiding the support obligation. A party’s employment-related change of income is considered to take place “during a period of significant unemployment” even if the change occurred prior to the Attorney General’s determination under ORS 416.425(13)(b), as long as the effects of the employment-related change of income continue into the time period covered by the determination.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstance.

(3) The administrator will conduct a review based upon a request for a change of circumstance modification when:

(a) Oregon has jurisdiction to modify;

(b) The administrator:

(A) Receives a request for modification based upon a change of circumstance and at least 60 days have passed from the date the existing support order was entered, except for those cases where a review is requested pursuant to paragraphs (3)(c)(H) or (I);

(B) Determines that a temporary modification should be initiated based on receipt of a request from a party who has experienced an employment-related change of income; or

(C) Determines that a modification should be initiated based on the administrator’s own motion; and

(c) At least one of the following criteria are met:

(A) A change in the written parenting time agreement or order has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent’s disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(D) Veterans benefits received on behalf of a child due to a parent’s disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(E) Survivors and Dependents Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;

(F) Since the date of the last order, the obligor has been incarcerated, as defined in OAR 137-055-3300;

(G) The needs of the child(ren) have changed;

(H) There is a need to add or change medical support provisions for a child;

(I) A change in the physical custody of a minor child has taken place;

(J) An order is being modified to include a subsequent child of the parties or to remove a child of the parties; or

(K) A child between 18 and 20 years old does not qualify as a child attending school under ORS 107.108 and OAR 137-055-5110 and, pursuant to ORS 107.108(10), tiered order provisions must be added, removed or changed. Tiered order has the meaning given in OAR 137-055-1020.

(d) And the requesting party (if other than the administrator):

(A) Completes a written or verbal request for modification based upon a substantial change of circumstance;

(B) Pursuant to ORS 416.425, provides appropriate documentation for the criteria in subsection (c) of this section showing that a substantial change of circumstance has occurred; and

(C) Completes a Uniform Income Statement or Uniform Support Affidavit or, if a temporary modification, provides employment status and income information sufficient to permit the administrator to have a reasonable basis to make a determination.

(4) Sections (5) through (9) do not apply to temporary modifications.

(5) Upon receipt of a request for a review and modification, or upon the administrator’s own initiative, the administrator will notify the parties

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of the review in writing, allowing the parties 30 days to provide information which may affect the support calculation.

(6) A request for review will be granted unless:

(a) The conditions in section (3) have not been met; or

(b) The review was requested due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(G), and the order is in substantial compliance with the guidelines. The determination of substantial compliance will be made as outlined in OAR 137-055-3420(1)(d), except as provided in section (7).

(7) The provisions of subsection (6)(b) do not apply if the new calculation:

(a) Includes consent by the parties as provided in OAR 137-050-0765;

(b) Includes compelling factors in the reasonable-in-cost limitation, as provided in OAR 137-050-0750(2)(a);

(c) Includes application of rebuts, as provided in OAR 137-050-0760; or

(d) Is for a modification to consider receipt of Social Security or Veterans' benefits as provided in paragraphs (3)(c)(C) or (D).

(8) If the request for review is granted, the administrator will advise the parties of the presumed correct support amount. Notification may be by motion for modification and will include a request for hearing form. If there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

(9) If the order is found to be in substantial compliance, and at least 35 months have passed since the date the most recent support order took effect, the administrator will complete the request as provided in OAR 137-055-3420(9).

(10) Sections (11) and (12) apply only to temporary modifications.

(11) The administrator will, to the extent possible, gather information from the parties which could affect the support calculation by phone or other electronic means, including facsimile and e-mail. Parties may agree to accept service by e-mail, regular mail or any other method.

(12) The administrator will advise the parties of the presumed correct support amount and may seek a consent order. Notification may be by motion for modification and will include a request for hearing form.

(13) If a request under this rule is denied, the administrator will notify the requesting party of the denial in writing within 30 days and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will advise the party on how to obtain the Oregon Judicial Department packet that has been prescribed for this purpose.

(14) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

(15) If a request for review and modification is received because a change in the physical custody of the minor child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

Stat. Auth.: ORS 180.345 & 416.455

Stats. Implemented: ORS 25.080, 25.287, 25.321 - 25.343, 107.108, 107.135 & 416.425

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 6-2009(Temp), f. & cert. ef. 5-14-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09; DOJ 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-27-10; DOJ 19-2010, f. 12-20-10, cert. ef. 12-27-10

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**Rule Caption:** Gasoline Price Advertising.

**Adm. Order No.:** DOJ 20-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 137-020-0150

**Subject:** OAR 137-020-0150, known as the "Gasoline Price Advertising rule" has not been amended since its adoption in 1985. The proposed amendment addresses changes in the industry, changes in alternatives to currency that consumers use to make purchases, changes in local rules pertaining to signage restrictions and 2010 HB 3677.

The Oregon Department of Justice receives complaints that allege unfair or deceptive conduct pertaining to disclosure of full service and added fees to use credit or debit cards.

Other changes in the past 25 years include different types of motor vehicle fuel, significant use of electronic dispensers, and loyalty cards.

The amendments address where and when gasoline prices and any conditions to the lowest cash price may be displayed and charged.

**Rules Coordinator:** Carol Riches—(503) 947-4700

## 137-020-0150

### Gasoline Price Advertising

(1) **Definitions:** For the purposes of OAR 137-020-0150 to 137-020-0160 the following definitions apply:

(a) "Clear and conspicuous" means in a form that is readily visible to and easily readable by a customer or potential customer who would be materially affected by the information and means in a location that a person who would be materially affected by the information ought to notice the information displayed.

(b) "Condition" means any payment method (e.g., credit), service level (e.g., full service or mini service), or any other modifying circumstance affecting the price per unit of measurement of motor vehicle fuel from the lowest cash price;

(c) "Diesel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine;

(d) "Display" means to post information on a street sign or price sign;

(e) "Full service" includes services such as washing windshields, windows and headlights, checking fluid levels, checking or adjusting tire pressure and inspecting belts and hoses but does not include a car wash;

(f) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded;

(g) "Grade" means the automotive fuel rating as defined in OAR 603-027-0410;

(h) "Lowest cash price" means the offering price available to all customers that pay in cash;

(i) "Mini service" means providing only the dispensing of motor vehicle fuel into a customer's vehicle;

(j) "Motor vehicle fuel" means gasoline, diesel or other fuel used for the generation of power in an internal combustion engine, except aviation jet fuels;

(k) "Other fuel" means gasoline-ethanol blends with greater than 10% by volume ethanol, 100% other renewable diesel (100% Biomass-Based Diesel), renewable diesel blends, B100 Biodiesel, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, E15, or any other liquid product used for the generation of power in an internal combustion engine that is sold to be used in a motor vehicle, except for gasoline and diesel;

(l) "Price sign" means any sign, billboard, digital signage or other medium that provides the price charged for motor vehicle fuel, is visible from a dispensing device and is not a street sign;

(m) "ODOT diesel" means undyed diesel sold for use in motor vehicles, which may be purchased without the tax provided the purchaser has valid credentials issued by ODOT under ORS 825 or ORS 319. ODOT diesel was formerly known as PUC diesel;

(n) "Retailer" means any person who operates a service station, business or other place for the purpose of retailing and delivering gasoline, diesel or other fuel into the tanks of motor vehicles;

(o) "Street sign" means any sign, billboard, digital signage or other medium that provides the price charged for motor vehicle fuel and is located near and is visible from a street or highway, such as a freeway pole sign or a monument sign; and

(p) "Unit of measurement" means a United States gallon or liter as defined in the National Institute of Standards and Technology (NIST) Handbook 44 entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" as adopted in OAR 603-027-0635.

(2) **Advertising:** A retailer is not required to display prices charged for motor vehicle fuel.

(3) **Displayed Prices:** A retailer may display a price for motor vehicle fuel. If a retailer displays a price for motor vehicle fuel:

(a) The retailer must clearly and conspicuously display on each street sign the lowest cash prices charged for the sale of the lowest grade of each type of motor vehicle fuel sold or offered for sale to all customers or potential customers;

(b) Notwithstanding subparagraph (a) above, if a retailer only sells or offers for sale ODOT diesel and no other motor vehicle fuel (including other diesel), the retailer may display only the ODOT diesel price on the street sign and does not need to post a price sign;

(c) The retailer must clearly and conspicuously display on each price sign all prices charged for the sale of all grades of motor vehicle fuel sold or offered for sale;

(d) If the lowest cash prices are available only under some conditions:

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(A) The retailer must clearly and conspicuously display all conditions on each street sign, price sign and dispensing device (e.g., cash only, mini serve);

(B) The retailer must ensure the following for each distinct street sign:

(i) All words or symbols of condition are in equal size and must be equally visible to a customer or potential customer;

(ii) All words or symbols of condition are in no less than one-third the size as the words or symbols setting forth the cash price; and

(iii) All words or symbols setting forth the prices applicable to the condition are in equal size and must be equally visible to a customer or potential customer as the words or symbols setting forth the cash price.

(C) The retailer must ensure the following for each distinct price sign:

(i) All words or symbols of condition are in equal size and must be equally visible to a customer or potential customer;

(ii) All words or symbols of condition are in equal size as the words or symbols setting forth the cash price; and

(iii) All words or symbols setting forth the prices applicable to the condition are in equal size and must be equally visible to a customer or potential customer as the words or symbols setting forth the cash price.

(D) The retailer must clearly identify the area where each price is available, if the lowest cash price is available only in a certain area of the service station or business. The identification may be placed on the canopy above the island, if it is visible from each side of the island, or at the entry points of the island. The identification must be clear and conspicuous from a driver's position;

(E) For full service, the retailer must state what specific services are included in its full service at the entry points of the island where full service is available; and

(F) The retailer may only charge a price greater than the lowest cash price if the retailer provides the condition or the condition is offered in a designated location and the customer affirmatively rejects the condition (e.g., the retailer either provided full service or the retailer offered to perform all services included in that retailer's full service in a location designated as full service and the customer rejected the services offered).

(e) The retailer may offer a discount from the lowest cash price for customers that enroll in a loyalty program, membership program or other similar program where a customer must affirmatively enroll in the program. If the discounted program is not available to all members of the general public, the retailer does not need to display the discounted program price under subsection (3)(c).

(f) The retailer must arrange all prices in a meaningful and consistent order;

(g) The retailer must clearly and conspicuously identify each grade of motor vehicle fuel that corresponds with each price;

(h) The retailer may not display prices for products other than motor vehicle fuel in a manner that creates a likelihood of confusion or misunderstanding with the price of motor vehicle fuel;

(i) The retailer may not require as a condition of buying motor vehicle fuel at the displayed price that a customer purchase a specific quantity (e.g., 8 gallons or a full tank) or dollar amount of motor vehicle fuel; and

(j) The retailer may display on the street sign all of the information required to be displayed on the price sign under subsection (5)(d)(B).

(4) **Dispensing Devices:** In regards to its motor vehicle fuel dispensing devices, a retailer must:

(a) Ensure that the price per unit of measurement and the unit of measurement for each grade of motor vehicle fuel are the same on each street sign, price sign and dispensing device used for delivering that kind of fuel into the tanks of motor vehicles;

(b) Ensure that computing-type dispensing devices automatically compute the full sales price for all motor vehicle fuel prices sold or offered for sale through the dispensing devices;

(c) Ensure that dispensing devices are set to display and compute all unit prices for each grades of motor vehicle fuel sold. A retailer may not use a dispensing device to dispense motor vehicle fuel at one or more unit prices the dispensing device cannot compute;

(d) Calibrate all dispensing devices in the same unit of measurement;

(e) Charge the customer only the total amount registered on the dispensing device at the selected unit price;

(f) If the lowest cash prices are available only under some conditions, ensure the dispensing device clearly and conspicuously states all conditions.

(A) The words or symbols of condition may be posted on the upper 50 percent of the dispensing device panel or on top of the dispensing device ("pump topper"); and

(B) The retailer must ensure that the letters stating the conditions are in block lettering type at least one inch in height and one-half inch stroke (width of type) in distinct contrasting color to the background.

(5) **Price signs:**

(a) In regards to its price signs, a retailer must:

(A) Ensure that at least one price sign is visible at or near each dispensing device; and

(B) Ensure that the information displayed on each price sign is clear and conspicuous from a driver's position.

(b) A retailer may place a price sign on top of the dispensing device ("pump topper"), on the island or on the side of the retailer's building;

(c) A retailer may post price signs in multiple locations in order to comply with subsection (5)(a) (e.g., a retailer may use pump toppers for one island and a sign on the side of the building for another island). Each price sign must comply with subsections (5)(d) and (e);

(d) If the price sign is on top of the dispensing device, the retailer must ensure:

(A) That the letters and numerals on the sign are in block lettering type at least one inch in height and one-half inch stroke (width of type) in distinct contrasting color to the background; and

(B) That the following information is displayed on the price sign:

(i) All words or symbols of condition; and

(ii) Immediately adjacent to the words or symbols of condition, either:

(I) The whole unit price of any condition for each grade of motor vehicle fuel; or

(II) The additional price per unit of measurement for any condition in whole cents (e.g., "credit price + 3¢/gal" or "full service additional 10¢/gal") for each grade of motor vehicle fuel. If the additional price per unit of measurement for a specific condition (e.g., credit) for each grade of motor vehicle fuel is the same, then only one price reference is required under this subparagraph.

(e) If the price sign is on the island or on the side of the retailer's building, the retailer must ensure:

(A) That the letters and numerals on the sign are in block lettering type at least three inches in height and one and one-half inch stroke (width of type) in distinct contrasting color to the background; and

(B) That the following information is displayed on the price sign:

(i) All words or symbols of condition; and

(ii) Immediately adjacent to the words or symbols of condition, the whole unit price of any condition for each grade of motor vehicle fuel.

(6) **Effective date:** If a retailer that displays a price for motor vehicle fuel complies with this subsection on January 1, 2011, the retailer does not need to comply with subsection (5) unless and until the retailer purchases a new street sign or modifies its street sign;

(a) The retailer clearly and conspicuously displays on each street sign the lowest cash prices for the sale of all grades of motor vehicle fuel sold or offered for sale;

(b) Notwithstanding subparagraph (a) above, if a retailer only sells or offers for sale ODOT diesel and no other motor vehicle fuel (including other diesel), the retailer may display only the ODOT diesel price on the street sign;

(c) If the lowest cash prices are available only under some conditions:

(A) The retailer clearly and conspicuously displays all conditions on the street sign and dispensing device;

(B) The retailer ensures the following for the street sign:

(i) All words or symbols of condition are in equal size and are equally visible to a customer or potential customer;

(ii) All words or symbols of condition are in no less than one-third the size as the words or symbols setting forth the cash price; and

(iii) All words or symbols setting forth the prices applicable to the condition are in equal size and are equally visible to a customer or potential customer as the words or symbols setting forth the cash price.

(C) Immediately adjacent to the words or symbols of condition, the retailer displays on the street sign either:

(i) The whole unit price of any condition for each grade of motor vehicle fuel; or

(ii) The additional price per unit of measurement for any condition in whole cents (e.g., "credit price + 3¢/gal" or "full service additional 10¢/gal") for each grade of motor vehicle fuel. If the additional price per unit of measurement for a specific condition (e.g., credit) for each grade of motor vehicle fuel is the same, then only one price reference is required under this subparagraph.

(D) The retailer clearly identifies the area where each price is available, if the lowest cash price is available only in a certain area of the service station or business. The identification may be placed on the canopy



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above the island, if it is visible from each side of the island, or at the entry points of the island. The identification must be clear and conspicuous from a driver's position;

(E) For full service, the retailer states what specific services are included in its full service at the entry points of the island where full service is available; and

(F) The retailer only charges a price greater than the lowest cash price if the retailer provides the condition or the condition is offered in a designated location and the customer affirmatively rejects the condition (e.g., the retailer either provided full service or the retailer offered to perform all services included in that retailer's full service in a location designated as full service and the customer rejected the services offered).

(d) The retailer may offer a discount from the lowest cash price for customers that enroll in a loyalty program, membership program or other similar program where a customer must affirmatively enroll in the program. If the retailer displays the discounted program price, it complies with subsection (6)(c);

(e) The retailer arranges all prices in a meaningful and consistent order;

(f) The retailer clearly and conspicuously identifies each grade of motor vehicle fuel that corresponds with each price;

(g) The retailer does not display prices for products other than motor vehicle fuel in a manner that creates a likelihood of confusion or misunderstanding with the price of motor vehicle fuel; and

(h) The retailer does not require as a condition of buying motor vehicle fuel at the displayed price that a customer purchase a specific quantity (e.g., 8 gallons or a full tank) or dollar amount of motor vehicle fuel.

Stat. Auth.: ORS 646

Stats. Implemented: ORS 646.608(1)(u) & 1985 c.751 (2)

Hist.: JD 7-1985, f. 12-31-85, ef. 1-1-86; DOJ 20-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Gasoline Price Advertising.

**Adm. Order No.:** DOJ 21-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 137-020-0160

**Subject:** OAR 137-020-0160 has not been amended since its adoption in 1985. The proposed amendment makes the definitions consistent with those contained in the proposed amendments to OAR 137-020-0150 concerning the types of motor vehicle fuel that are sold by retailers.

**Rules Coordinator:** Carol Riches—(503) 947-4700

## 137-020-0160

### Sales Practices

(1) A retailer may not limit the price advertised for a particular grade of motor vehicle fuel to a customer purchasing or receiving goods or services in addition to the motor vehicle fuel except for full services. For purposes of this rule, a customer does not include customers who purchase ODOT diesel.

(2) The location at which any grade of motor vehicle fuel is dispensed or at which any condition is applicable will not be changed except for a bona fide reason and will not be changed within 60 days of another change except for an emergency or legal necessity.

(3) Violation of OAR 137-020-0150 and this rule is a violation of the Unlawful Trade Practices Act, ORS 646.608(1)(u).

Stat. Auth.: ORS 646

Stats. Implemented: ORS 646.608(1)(u) & 1985 c.751 (2)

Hist.: JD 7-1985, f. 12-31-85, ef. 1-1-86; DOJ 21-2010, f. 12-30-10, cert. ef. 1-1-11

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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 8-2010(Temp)

**Filed with Sec. of State:** 12-20-2010

**Certified to be Effective:** 1-1-11 thru 6-29-11

**Notice Publication Date:**

**Rules Amended:** 837-012-0315, 837-012-0330

**Subject:** 837-012-0315 and 837-012-0330 updates are to adopt current editions of Oregon Fire Code, Building Code, clarification and housekeeping changes.

**Rules Coordinator:** Pat Carroll—(503) 934-8276

## 837-012-0315

### Definitions

(1) "Agent" means an individual designated by the permit holder to pick up the agricultural fireworks authorized by the agricultural permit from an Oregon licensed wholesaler when the permit holder is unable to pick up the agricultural fireworks. The agent must have the agricultural permit (or a copy) issued by the State Fire Marshal in their possession at the time the agricultural fireworks are picked up from the wholesaler.

(2) "Agricultural Fireworks" means:

(a) Fireworks with a cardboard/pasteboard-type tube up to 4" in length and 3/4 inch in diameter or a shotgun shell type container,

(b) Fireworks containing only pyrotechnic compositions, e.g., black powder, flash powder, or smokeless powder, with an audible report containing up to 40 grains, or 2.592 grams, of explosive composition,

(c) Fireworks tested, classified and approved by the United States Department of Transportation,

(d) Fireworks designed and intended solely for use in:

(A) Controlling predatory animals allowed by ORS 480.124 or,

(B) Controlling birds or animals which are or may injure forest or agricultural products or crops, allowed by ORS 480.122,

(e) Fireworks referred to as explosive pest control devices,

(f) Fireworks not including retail fireworks, public display fireworks, or exempt fireworks.

(3) "Agricultural Permit" means the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.122 and 480.124 and OAR 837-012-0305 through 837-012-0370 granting permission to a person to purchase and use agricultural fireworks.

(4) "Agricultural Crop" means a plant or animal or plant or animal product that can be grown or harvested extensively for profit or subsistence.

(5) "Agricultural Product" means a product that is naturally grown and brings a profit.

(6) "Fire Protection District" means any district created under the laws of Oregon or the United States, including rural Fire Protection Districts and any federal, state or private forest patrol areas. Reference ORS 480.110(2).

(7) "Fireworks" has the meaning provided in ORS 480.110(1) and 837-012-0315(2).

(8) "Individual" means a real, actual person.

(9) "Individual Member of the General Public" means 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.

(10) "Local Fire Authority" means the local fire authority having jurisdiction over the agricultural fireworks use and storage sites.

(11) "May" means a regulation of conduct and implies probability or permission.

(12) "May not" means a prohibition of conduct.

(13) "Must" means a mandatory requirement.

(14) "Permit Application" means the form and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of an agricultural permit.

(15) "Permit Holder" means the person referred to in ORS 480.122 who:

(a) Desires to purchase, maintain, use, and explode agricultural fireworks for the purpose of scaring away or repelling birds or animals which are or may be injurious or destructive to forest or agricultural products or crops,

(b) Has applied to the State Fire Marshal for an agricultural permit;

(c) The State Fire Marshal has issued an agricultural permit referred to in ORS 480.122;

(d) Is responsible for any activities conducted under the agricultural permit.

(16) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(17) "Sell" means to transfer possession of property from one person to another person for consideration.

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(18) "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 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0015; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 8-2010(Temp), f. 12-20-10, cert. ef. 1-1-11 thru 6-29-11

## 837-012-0330

### General

(1) Agricultural permits are issued solely for the purpose of purchasing, possessing, and using agricultural fireworks allowed by ORS 480.122 and ORS 480.124.

(2) Agricultural permit holders must notify the Office of State Fire Marshal, in writing, within 24 hours of the date of change, of:

(a) The agricultural permit holder's mailing address, telephone number,

(b) The storage address of the agricultural fireworks.

(3) Change of the storage location of the agricultural fireworks is subject to prior written approval by the local fire authority and the Office of State Fire Marshal.

(4) Agricultural permit holders must comply with all applicable federal, state and local laws, rules and regulations including, without limitation:

(a) ORS 480.110 through 480.165;

(b) OAR Chapter 837, Division 12;

(c) Oregon Fire Code, 2010 Edition; and

(d) Oregon Structural Specialty Code, 2010 Edition.

(5) Agricultural permit holders must purchase agricultural fireworks only from wholesalers having the necessary and current permits required by ORS 480.110 to 480.160 and OAR 837-012-0500 through 837-012-0570.

(6) Agricultural permit holders may request a duplicate copy of their agricultural permit by certifying to the Office of State Fire Marshal, in writing, their agricultural permit has been lost, stolen, or destroyed. Written requests must be signed and dated by the agricultural permit holder.

(7) The issuance of an agricultural permit does not in any way constitute approval by the Office of State Fire Marshal of any agricultural fireworks purchased, sold, or provided pursuant to the agricultural permit.

(8) An agricultural permit allows the permit holder to engage in the purchase, transportation, possession, storage and use of agricultural fireworks when those activities are otherwise in conformance with the applicable requirements of ORS 480.110 through 480.165, OAR Chapter 837, Division 12 and any other federal, state or local laws, rules or regulations pertaining to fireworks.

(9) An agricultural permit holder may not sell or provide agricultural fireworks to any other person.

(10) Any agricultural permit holder, other than an individual, is required by the State Fire Marshal to list the name, age, address, and phone number of one individual in a management position within their company or organization, on the permit application.

(11) Individuals firing agricultural fireworks shall be a minimum of 18 years of age.

(12) Only the agricultural permit holder, and any employees of the agricultural permit holder, may engage in activities authorized by the agricultural permit.

(13) Agricultural permits, and the rights conveyed by the agricultural permit, are not transferable.

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

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0030; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 8-2010(Temp), f. 12-20-10, cert. ef. 1-1-11 thru 6-29-11

## Department of Public Safety Standards and Training Chapter 259

**Rule Caption:** Fix error by removing requirements for telecommunicator/emergency medical dispatcher writing test.

**Adm. Order No.:** DPSST 13-2010

**Filed with Sec. of State:** 12-23-2010

**Certified to be Effective:** 12-23-10

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 259-008-0011

## Rules Repealed: 259-008-0011(T)

**Subject:** This rule establishes the minimum standards for employment for telecommunicators and emergency medical dispatchers. A 12th grade writing standard was eliminated by a permanent rule filed December, 2008. The verbiage was inadvertently returned in a subsequent rule filing. This amendment removes the requirements for a writing test. An additional housekeeping change was made for clarity.

**Rules Coordinator:** Linsay Bassler—(503) 378-2431

## 259-008-0011

### Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher

(1) On or before the date of employment, each telecommunicator and emergency medical dispatcher shall be fingerprinted on standard applicant fingerprint cards.

(a) The hiring agency, if a public agency, is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(b) If the hiring agency is a private agency it is responsible for fingerprinting and shall forward two (2) cards to the Department along with the appropriate fee.

(A) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(B) The Oregon State Police Identification Services Section shall notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(C) If any procedural change is made by the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department shall comply with the most current requirements.

(D) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(2) Criminal Records. No telecommunicator or emergency medical dispatcher shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(3) Moral Fitness (Professional Fitness). All telecommunicators and emergency medical dispatchers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(a) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(b) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

(4) Education:

(a) Applicants for the position of a telecommunicator or emergency medical dispatcher will be required to furnish documentary evidence of one of the following:

(A) High School diploma; or

(B) Successful completion of the General Educational Development (GED) Test.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(5) Reading Standard. Before beginning basic telecommunicator or emergency medical dispatcher training or challenging basic telecommunicator training, each applicant shall provide evidence to the Department that the applicant has attained a minimum of a 12th grade reading level in the English language.

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(a) The hiring agency is responsible for administering a reading test, approved by the Department, and shall forward the results to the Department on an application for training (Form F-5) prior to the applicant being admitted to basic telecommunicator or emergency medical dispatcher training.

(b) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by the Department under the provisions of OAR 259-008-0045 are exempt from completing the 12th grade reading test prior to attending a course identified in this section.

(6) Physical Examination. All telecommunicators and emergency medical dispatcher applicants must be examined by a licensed physician.

(a) The medical examination must be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and must conform to applicable standards of the Americans with Disabilities Act (ADA), Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) The Department will not require a new physical examination when a telecommunicator or emergency medical dispatcher obtains employment, or re-employment, in the same discipline if the telecommunicator or emergency medical dispatcher:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is currently employed full-time in another jurisdiction and has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Telecommunicator and emergency medical dispatcher applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) when tested using both eyes together.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by the Department. The results of the field test and the methods for testing must be maintained by the employing agency.

(i) Any employing agency that conducts a field test to meet the color vision standard must also complete a Department approved affidavit attesting that the applicant can either correctly discriminate colors or is able to successfully perform the required tasks of a telecommunicator or emergency medical dispatcher, notwithstanding the applicant's inability to correctly discriminate colors.

(ii) Any affidavit required by (i), that the Department receives and accepts, is non-transferable to any subsequent employer and may not be used by any other entity for certification purposes.

(iii) Notwithstanding subsection (c) of this rule, each employer must complete an agency-specific field test and a Department approved affidavit as described in subsection (i) of this section for any telecommunicator or emergency medical dispatcher who previously met the color vision standard by completing a field test.

(C) Peripheral Vision. Visual Field Performance must be 120 degrees in the horizontal meridian combined.

(f) Applicants for the position of telecommunicator or emergency medical dispatcher must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must meet National Emergency Number Association (NENA) hearing standard 54-002 (June 10, 2006).

(g) Applicants for the position of telecommunicator or emergency medical dispatcher must be able to use vocal cords and exhibit normal speech patterns, sufficient to perform speaking-related essential tasks.

(7) If further medical examination is required, it will be at the expense of the applicant or the hiring authority.

(8) All telecommunicator and emergency medical dispatcher applicants must submit a current-version DPSST Medical Examination Report for Telecommunicators and Emergency Medical Dispatchers (DPSST Form F-2T), or a medical report completed by a licensed physician containing at a minimum the information on Form F-2T. This Report will be furnished to the examining physician by the hiring agency.

(9) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(10) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(11) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of a telecommunicator or emergency medical dispatcher's duties. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(12) A person or department head requesting a waiver of any physical requirement set forth in section (11) of this rule must submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(a) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(b) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (13) of this rule.

(13) Contested Case Hearing Process for denial of waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional or individual.

(c) Response Time: A party who has been served with a "Contested Case Notice" 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.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver.

(e) 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.

(f) 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.

(g) 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.

(h) Final Order: The Department will issue a final order if a public safety professional or individual fails to file exceptions and arguments in a timely manner.

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

Stat. Auth.: ORS 181.640, 181.644 & 183.341

Stats. Implemented: ORS 181.640, 181.644 & 183.341

Hist.: BPSST 1-2002, f. & cert. ef. 2-6-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 5-2008, f. & cert. ef. 4-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 6-2009, f. & cert. ef. 7-13-09; DPSST 9-2010(Temp), f. & cert. ef. 10-15-10 thru 4-12-11; DPSST 13-2010, f. & cert. ef. 12-23-10



# ADMINISTRATIVE RULES

## Department of Revenue Chapter 150

**Rule Caption:** Determining estimated tax payment; severance pay subtraction requirements; substantial income understatement penalty for part-year residents.

**Adm. Order No.:** REV 16-2010

**Filed with Sec. of State:** 12-17-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 150-316.ORLAWS2010.CH66

**Rules Amended:** 150-314.402(1), 150-316.587(8)-(A)

**Rules Repealed:** 150-314.760

**Subject:** 150-314.402(1) is amended to clarify the calculation of the penalty imposed for substantial understatement of income. Specifically: (1) the provisions of ORS 316.117 apply to compute the penalty for nonresidents or part-year residents; and (2) withholding not previously reported will be taken into consideration when calculating the penalty.

150-316.587(8)-(A) relates to the requirements for individuals to make estimated tax payments. We are proposing an amendment to clarify examples and to clarify how an individual determines the required annual installment payment.

150-316.ORLAWS2010.CH66 describes the procedures for claiming a severance pay subtraction in accordance with Chapter 66, Oregon Laws 2010 (House Bill 3627).

150-314.760 is repealed because the corresponding statute was repealed.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

### 150-314.402(1)

#### Computation of Penalty for Substantial Understatement of Taxable Income (SUI)

(1) The department will assess a penalty if a substantial understatement of taxable income exists for any taxable year. The penalty is equal to 20 percent of the amount of any underpayment of tax attributable to the understatement of taxable income. A substantial understatement exists only if incurred on the return of the individual, corporation, or reporting entity required to file a return and pay tax.

(2) Substantial Understatement. An understatement is substantial if the understatement exceeds \$25,000 for corporations (other than S corporations or personal holding companies) or exceeds \$15,000 for all other taxable entities.

*Example 1:* A partnership return is adjusted for a \$50,000 increase in unreported income. The partnership is owned by Renton, Mark, and Paul. The partnership adjustment results in an increase in unreported income of \$30,000 on Renton's individual return, \$15,000 on Mark's individual return, and \$10,000 on Paul's individual return. The SUI penalty is only assessed on Renton's tax due because only his return was adjusted for more than \$15,000. The adjustment to Mark and Paul's individual returns will not include the SUI penalty, although all three may be subject to other penalties as provided by law.

(3) Understatement Computation.

(a) For full-year residents, the understatement is the taxable income required to be shown on the return minus the taxable income shown on the return. For nonresidents and part-year residents the understatement is calculated the same as for full-year residents except that taxable income must be calculated as provided in ORS 316.117

(b) Taxable income required to be shown is the amount of taxable income determined for the taxable year without regard to:

(A) Any net operating loss carryback, capital loss carryback, or commodity futures carryback.

(B) Any net operating loss carryback applied to a prior year and the balance carried forward to the taxable year in which the penalty is applied.

(c) Taxable income shown is the amount determined from items properly reported on the return and:

(A) Items with substantial authority (as described in OAR 150-314.402(4)(b)) had such items received the proper tax treatment; and

(B) Items with adequate disclosure and reasonable basis (as described in OAR 150-314.402(4)(b)) had such items received the proper tax treatment.

(d) Items not included in the computation for taxable income shown are:

(A) Any net operating loss carryback, capital loss carryback, or commodity futures carryback.

(B) Any net operating loss carryback applied to a prior year and the balance carried forward to the taxable year in which the penalty is applied.

(C) Items without substantial authority or adequate disclosure and reasonable basis as described in OAR 150-314.402(4)(b).

(D) Items attributable to an abusive tax shelter as defined in ORS 314.402(4)(a).

(4) Penalty Computation.

(a) The penalty is equal to 20 percent of the amount of any underpayment of tax attributable to the understatement of taxable income. The underpayment of tax attributable to the understatement is computed by applying an allocation percentage to the total underpayment of tax. The percentage to apply is computed by dividing the understatement of taxable income by total adjustments made. The total underpayment of tax is the tax required to be shown on the return minus the tax shown on the return for the taxable year.

(b) Tax required to be shown is the net tax computed on the taxable income required to be shown, as determined in subsection (3)(b) of this rule, without regard to:

(A) Withholdings (unless the withholding payments were unreported by the taxpayer or were collected without assessment for the taxable year);

(B) Estimated tax paid by the taxpayer; or

(C) The state surplus refund pursuant to ORS 291.349.

(c) Tax shown on the return is the amount of net tax determined for the taxable year before the taxpayer was first notified by the department concerning their tax liability. If the return shows no net income tax, the amount of tax shown on the return is considered to be zero. In all cases, tax shown is computed without regard to:

(A) Withholdings;

(B) Estimated tax paid by the taxpayer; or

(C) The state surplus refund pursuant to ORS 291.349.

(5) A net operating loss carryover, tax credit carryover, or capital loss carryover shall be treated for the purposes of ORS 314.402 as a credit or deduction in the year in which the carryover is taken into account.

(6) The department will not impose a penalty under ORS 314.402 unless a return has been filed. [Example not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.402

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09; REV 16-2010, f. 12-17-10, cert. ef. 1-1-11

### 150-316.587(8)-(A)

#### Required Installments for Estimated Tax

(1) Definitions.

(a) "Required annual payment" means the total amount of required installment payments for the tax year.

(b) "Required installment payment" means the amount of the payment that is due for each of the four payment periods during the tax year.

(2) There are two steps to determine estimated tax payments. The first step is to determine the required annual payment, and the second step is to determine the amount of the required installment payments.

(3) Determination of required annual payment amount.

(a) The required annual payment is the lesser of:

(A) Ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, ninety percent of the tax for such year); or

(B) One hundred percent of the tax shown on the prior year's return, if qualified. This is sometimes referred to as 'safe harbor.' To use the prior year's tax to determine the required annual payment, the prior year's return must have been a timely filed Oregon return, including extensions, and the prior tax year must consist of 12 months.

*Example 1:* Amanda's adjusted gross income on her timely filed return in 2008 was \$30,000 and her Oregon tax liability after credits was \$2,000. Amanda's 2009 Oregon tax liability after credits is \$2,800. Ninety percent of the 2009 tax after credits is \$2,520. She can use the prior year tax and pay 2009 estimated tax payments equal to 100 percent of her 2008 tax liability (\$500 on each installment due date).

(b) A part-year resident may use the prior year tax unless disqualified for a reason described in this section.

*Example 2:* Michael moved to Oregon from California on July 1, 2008 and filed as a part-year resident. His 2008 Oregon tax after credits was \$1,500. Even though his 2008 return shows 6 months of Oregon residency, his taxable year for 2008 was 12 full months. He qualifies to use safe harbor (prior year tax) to determine his required annual payment for 2009. This is less than 90 percent of his 2009 tax, so he will use that to determine his required annual payment. His required installment payments in 2009 are \$375 for each period (25% of \$1,500) for regular installment payments, or the applicable percentage if using the annualized income installment payments, in order to avoid interest on underpayment of estimated tax for 2009.

(c) Tax shown on the prior year's return does not include any payment received as a state surplus refund of personal income tax determined under ORS 291.349.

*Example 3:* Roberta had tax after credits of \$1,500 for 2006. She received a surplus

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refund check in November 2007 of \$309 based on her 2006 tax before credits. That payment is not taken into account in determining the tax shown on her 2006 return (prior year) when figuring her required annual payment for 2007. Her 2007 tax after credits is \$2,300, so she will use her prior year tax of \$1,500 as her required annual payment because it is the lesser amount.

(d) Use the amounts from the original return to determine the payments unless an amended return was filed before the due date, including extensions. In that case, use the amounts from the amended return to determine the required annual payment. Returns filed after the due date cannot be used to determine the required annual payment.

**Example 4:** Aliyah's original tax return showed a tax liability after all credits of \$1,400. Aliyah did not file an extension. In July, the return was amended and the tax liability after credits was \$1,200. Aliyah bases her required annual payment on the \$1,400 tax shown on the original return.

**Example 5:** Shaylee's original tax return was filed June 30, 2008 with an approved extension to October 15, 2008 showing a tax liability of \$1,975. On October 09, 2008 the return was amended and the tax liability was reduced to \$1,245. In 2009, if Shaylee chooses to use the prior year's tax, the required annual payment is based on the \$1,245 tax shown on the amended return filed within the extension period.

(e) Estimated tax payments are not required if the amount of the required annual payment minus Oregon tax withheld is less than \$1,000. For information about additional exceptions, see ORS 316.563 through 316.588, and OAR 150-316.573 through 150-316.587(5)(d).

**Example 6:** Brandon and Michelle are married and have three children. Brandon is self-employed. Michelle works part-time. They want to know if they are required to make estimated tax payments. Their estimated 2009 adjusted gross income is \$75,000, their estimated net itemized deductions are \$13,500 and they expect to have \$630 withheld from Michelle's wages.

They need to calculate the amount of their required annual payment as follows: [Tables not included. See ED. NOTE.]

(4) Determination of the required installment payment amount.

(a) The required installment payment for each of the four tax periods is the lesser of the payment due under one of the following two methods for determining the amount of an installment payment:

(A) Regular Installment: The required installment payment for each period is 25 percent of the required annual payment.

(B) Annualized Income Installment: The required annualized income installment payment is the "applicable percentage" of the required annual payment for the taxable year minus the amount of any required installments paid for prior periods during the tax year. The applicable percentages are:

- (i) 22.5% for the first period;
- (ii) 45% for the first and second periods;
- (iii) 67.5% for the first, second and third periods; and
- (iv) 90 % for the first through fourth periods.

(b) If the taxpayer shows that the annualized income installment for a period (as determined from the annualized income worksheet) is less than the regular installment for that period, the amount of the required installment payment for that period is the annualized income installment.

(c) If the annualized income installment method is used to determine a required installment payment, the difference between that amount and the amount that would have been due if the regular installment method had been used must be added to the required installment payment for the next succeeding period.

(d) Generally, credits based on income or deductions are figured on the annualized income or deductions for each period.

(e) Credits computed as a percentage of income must be based upon the annualized income for the period.

(f) Credits that use income as a basis for determining an applicable percentage or for otherwise limiting the allowable credit must be based upon the total annualized income before allocation to the installment period.

**Example 7:** Richard and Terrie are married with no dependents. They had adjusted gross income of \$14,000 for the period of January 1, 2006 to March 31, 2006. For the same period, they had itemized deductions of \$2,810. For the period of January 1, 2006 to May 31, 2006, they had adjusted gross income of \$27,000 and itemized deductions of \$4,300. For the period of January 1, 2006 to August 31, 2006, they had adjusted gross income of \$41,000 and itemized deductions of \$6,300. For the period January 1, 2006 to December 31, 2006, they had adjusted gross income of \$69,000 and itemized deductions of \$14,100. Their 2005 timely filed return showed tax after credits of \$3,155. For purposes of computing the required installment, the following computations are necessary: [Tables not included. See ED. NOTE.]

(g) Pass-through entity (PTE) income may be annualized following the methodology provided under Internal Revenue Code (IRC) section 6654, Treasury Regulation section 1.6654-2 and all other related regulations and rules, if annualizing more accurately reflects the fluctuations in income to the shareholder from the entity. Solely for purposes of annualizing, the shareholder or partner may recognize the distributable share of income or loss from the PTE for the months in the PTE's taxable year ending within the taxable year of the shareholder or partner that precede the month in which the estimated tax installment is due.

**Example 8:** Ed's Catering, Inc. (ECI) is a calendar year S corporation that is in the catering business. ECI has limited business outside of the busy holiday party season. The majority of its business occurs in October, November, and December. In 2009,

ECI's income was \$30,000 from January 1 – March 31; \$25,000 from April 1 – June 30; \$20,000 from July 1 – September 30; and \$450,000 October 1 to December 31. An ECI shareholder who receives most of his or her income during the last quarter in ECI's tax year may choose to use the annualized income installment method for purposes of determining estimated tax payments.

**Example 9:** Wedding Planner's, Inc. (WPI), an S corporation, has a fiscal year ending July 31st. The majority of its business occurs in May, June, and July. In fiscal year beginning 2008, WPI's income was \$30,000 from August 1, 2008 – October 31, 2008; \$25,000 from November 1, 2008 – January 31, 2009; \$20,000 from February 1, 2009 – April 30, 2009; and \$450,000 May 1, 2009 to July 31, 2009. The shareholder must include the income attributable to WPI as follows when determining the required installment for the shareholder's calendar year 2009 using the annual method:

The 1st required installment is based on PTE income/loss from August 1st of the prior year to March 31st. Date payment is due is April 15th. The 2nd required installment is based on PTE income/loss from August 1st of the prior year to May 31st. Date payment is due is June 15th. The 3rd required installment is based on PTE income/loss from August 1st of the prior year to July 31st. Date payment is due is September 15th. The 4th required installment would already include the entire amount from the PTE received in the tax year of the shareholder but should not increase the underpayment for the 4th quarter since it was fully included by the third payment.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.587

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2001, f. & cert. ef. 12-31-01; REV 3-2006, f. & cert. ef. 7-31-06; REV 6-2008, f. 8-29-08, cert. ef. 8-31-08; REV 16-2010, f. 12-17-10, cert. ef. 1-1-11

## 150-316.ORLAW2010.CH66

### Subtraction for Qualified Investment of Severance Pay

(1) Definitions. For the purposes of Chapter 66, Oregon Laws 2010 (House Bill 3627) and this rule:

(a) "Invest" means to exchange cash for equity, debt, convertible debt, or management responsibilities, accompanied by terms that substantiate ownership or control of an interest in a business. "Invest" does not mean to make a loan to a business.

(b) "Material participation" means regular, continuous, and substantial participation in the small business. A taxpayer is considered to have materially participated in the small business if the taxpayer:

(A) Worked for the small business for more than 500 hours in each of the 12 month periods required under section 2(b) of this rule;

(B) Worked for the small business for more than 100 hours in each of the 12 month periods required under section 2(b) of this rule and at least as much as any other owner or employee; or

(C) Performed substantially all the work in the small business.

(c) "Severance pay" means compensation payable, other than back wages, vacation pay or sick pay, on voluntary termination or involuntary termination of employment based on length of service, a percentage of final salary, a contract between the employer and the employee, or some other reasonable method. "Severance pay" does not include retirement income as defined in ORS 316.127(9).

(d) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees.

(2) Qualifications. Severance pay that a taxpayer receives during the tax year and invests in a new or existing small business in Oregon may be subtracted from federal taxable income if:

(a) The investment occurs on or before the due date of the return, including extensions, for the first tax year in which the subtraction may be claimed;

(b) The investment continues for at least 24 consecutive calendar months following the termination of employment (for example - July 13, 2010 through July 12, 2012);

(c) The small business is not the employer that paid the severance pay and does not have any owner in common with the employer that paid the severance pay;

(d) No subtraction has previously been claimed under this section;

(e) The taxpayer completes a form provided by the department that is attached to the return of the taxpayer or is otherwise maintained or filed pursuant to form instructions; and

(f) The taxpayer materially participates in the small business for the period required under subsection (b) of this section.

(3) The taxpayer must demonstrate to the department's satisfaction that the small business is carrying on an activity for profit. If requested, the taxpayer must provide documentation to that effect to the department. In making such a determination, the department may consider the following nonexclusive list of factors:

(a) Whether the small business keeps and maintains a detailed business plan that includes strategies or methods to make a profit or improve profitability;

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(b) Whether separate books, records and bank account(s) are maintained for the small business;

(c) Whether the taxpayer carries on the activity in a businesslike manner.

(4) Severance pay received as an annuity. Only cash invested on or before the due date of the return, including extensions, qualifies for this subtraction. Any severance pay invested after the return is filed does not qualify for a subtraction under this section.

(5) Severance pay received as stock options. All stock options must be converted to cash before being invested to qualify for a subtraction under this section.

(6) The subtraction may not exceed the lesser of:

(a) The minimum balance of principal that remains invested by the taxpayer in the small business at the close of any month during the 24 consecutive calendar months following the termination of employment; or

(b) \$500,000.

(7) Interest accrues as provided in ORS 305.220 on any unpaid tax attributable to any disallowance or withdrawal of principal.

**Example 1:** Maggie was terminated from employment on October 1, 2010, and received severance pay of \$50,000 as a condition of her termination. On April 1, 2011, Maggie filed her personal income tax return, for which she had not requested an extension of time to file. On August 11, 2011, Maggie invested the severance pay in a qualifying small business. Maggie does not qualify for the subtraction because she did not invest the severance pay by the due date of the return.

**Example 2:** Joe was terminated from employment on July 1, 2010, and received severance pay of \$20,000 as a condition of his termination. Joe invested the entire \$20,000 in Company A, which qualifies as a small business, on September 1, 2010, and took a \$20,000 subtraction on his 2010 return. On January 30, 2012, Joe withdrew the entire \$20,000 he invested. Joe must file an amended return for tax year 2010 to remove the \$20,000 subtraction (and pay any additional tax and interest that may be due) because he did not continue the investment for at least 24 consecutive months following the termination of employment.

**Example 3:** Alicia was terminated from employment on October 1, 2010, and received severance pay of \$80,000 as a condition of her termination. Alicia invested the entire \$80,000 in Company B, which qualifies as a small business, on December 1, 2010. Alicia took an \$80,000 subtraction on her 2010 personal income tax return. On July 30, 2012, Alicia withdrew \$20,000 of principal from her initial investment for personal use. Alicia must amend her 2010 return to remove \$20,000 of the subtraction (and pay any additional tax and interest that may be due).

**Example 4:** Ryan was terminated from employment on October 1, 2010. He received severance pay in the form of a \$1,000 a month annuity over 5 years beginning in October of 2010. Ryan accumulated his severance payments for 6 months and invested the \$6,000 in a small business. He claimed a subtraction of \$6,000 on his return he filed on April 1, 2011. Ryan continues to accumulate his severance pay for the next year and invests another \$12,000 in the small business on March 1, 2012. Ryan cannot claim a subtraction for the additional severance pay he invested because it was invested after the return was filed.

(8)(a) If the small business is doing business both in Oregon and some other place outside of Oregon, the amount of the subtraction allowed is generally determined by multiplying the total qualifying amount of severance pay invested by the sales factor determined under ORS 314.665 and associated administrative rules.

(b) The taxpayer may present an alternative method of calculating the amount of the qualified subtraction if the calculation under subsection (a) does not result in a reasonable reflection of the extent of the business activity in Oregon. To be considered reasonable, the method of calculation must take into account the business activity taking place within Oregon versus the activity taking place outside of Oregon. The method must be fully described in an attachment to the taxpayer's return on which the subtraction is claimed.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 305.100, Ch. 66, OL 2010 (House Bill 3627)  
Stats. Implemented: Ch. 66, OL 2010 (House Bill 3627)  
Hist.: REV 12-2010(Temp), f. & cert. ef. 7-23-10 thru 12-31-10; REV 16-2010, f. 12-17-10, cert. ef. 1-1-11

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**Rule Caption:** Determining FCC license values for property tax purposes; local ballot measure language; county expenditure estimates.

**Adm. Order No.:** REV 17-2010

**Filed with Sec. of State:** 12-17-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 150-307.126

**Rules Amended:** 150-280.075, 150-294.175(2)-(B)

**Rules Repealed:** 150-311.160

**Subject:** 150-280.075 conforms the rule to legislative changes enacted by HB 3237 (2009). The rule describes the language that is to appear on a local ballot measure.

150-294.175(2)-(B) is amended to describe the process counties may use if, due to budget constraints, they wish to decrease an estimate of expenditures after May 1.

150-307.126 is adopted to describe how the value of a Federal Communications Company (FCC) license is determined in order to remove that value from the total system value of a communication company for purposes of property taxation.

150-311.160 is repealed as obsolete. The rule applies to appeals from years before 1997-98.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

## 150-280.075

### Tax Election Ballot Measure Requirements

(1) All ballot titles are required to contain essentially the same language within the standard format as outlined in ORS 250.035.

(2) The caption is limited to not more than 10 words. The purpose is to identify the type of tax presented for voter approval. The name of the municipal corporation and dollar figures must not be included in the caption.

(3) The question is limited to 20 words that plainly state the purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure. The question must contain the following:

(a) The name of the municipal corporation. The word "district" may be substituted for the full name of the municipal corporation if the full name appears in the ballot measure summary;

(b) The amount of property tax in dollars and cents, or the tax rate per \$1,000 of assessed value;

(c) The purpose of the tax, such as operating, capital project, or establishing a permanent rate limit;

(d) The first fiscal year the tax is to be imposed; and

(e) The length in years that the proposed tax is to be imposed.

(4)(a) Directly after the question for a proposed new local option tax, the following statement is required: "This measure may cause property taxes to increase more than three percent."

(4)(b) In lieu of the statement required by subsection (a) of this section, for a question that is requesting the renewal of a current local option tax, the following statement is required: "This measure renews current local option taxes." To qualify as a renewing measure, a measure must ask for the same tax rate or annual dollar amount as the current local option tax, or a lower rate or amount, and be for substantially the same purpose as the current local option tax.

(c) The statement required by subsection (a) or (b) of this section is not included in the 20-word limitation.

(5) The summary is limited to 175 words and explains the purpose of the tax in plain language. It must not advocate a yes or no vote on the question. The summary must contain the following:

(a) As the first sentence, except for elections held in May or November of any year: "This measure may be passed only at an election with at least a 50 percent voter turnout." This statement is not included in the 175-word limitation;

(b) For a dollar amount local option, the total amount of money to be raised by the measure, and;

(c) For a tax rate local option, an estimate of the amount of taxes to be raised in each year in which the tax will be imposed.

(6) If an estimated tax rate is included in the summary of a measure requesting an annual dollar amount levy, it must also contain the following statement: "The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of estimate." This statement is not included in the 175-word limitation. **EXAMPLE ONE-YEAR LOCAL OPTION (RATE)** (May or November election):

Caption: One-year Local Option Tax

Question: Should Sample City impose \$.40 per \$1,000 of assessed value for operating purposes for one year beginning 2008-2009? This measure may cause property taxes to increase more than three percent.

Summary: The purpose of this measure is to provide funds for the general operations of Sample City. It will enable the city to maintain operations at their current level. It is estimated that the requested rate will raise \$100,000 in fiscal year 2008-2009.

**EXAMPLE MULTIPLE-YEAR LOCAL OPTION (UNIFORM DOLLAR AMOUNT)** (March or September election):

Caption: Nine-year Capital Project Local Option Tax

Question: Should the district impose \$20,000 each year for nine years to purchase two vehicles and a maintenance shed beginning 2008-2009? This measure may cause



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property taxes to increase more than three percent.

**Summary:** This measure may be passed only at an election with at least a 50 percent voter turnout. The taxes to be raised in nine years total \$180,000, to be imposed in equal amounts of \$20,000 each year. The taxes will be used to purchase two new city vehicles to replace existing vehicles. The tax revenue will also be used to acquire a maintenance shed to house the city's park maintenance equipment. The city currently has no maintenance shed. It is estimated that the proposed tax will result in a rate of approximately \$.10 per \$1,000 of assessed value in the first year. The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of estimate.

**EXAMPLE MULTIPLE-YEAR LOCAL OPTION (RATE) (RENEWAL)** (March or September election):

**Caption:** Three-year Operating Local Option Tax

**Question:** Should Sample County impose \$.76 per \$1,000 of assessed value for operations for three years beginning 2008-2009? This measure renews current local option taxes.

**Summary:** This measure may be passed only at an election with at least a 50 percent voter turnout. This measure will continue a current local option tax that, without renewal, will expire in 2008. If renewed, the tax revenue will continue to be used to operate the county at its current levels of service. It is estimated the proposed rate will raise \$152,000 in 2008-2009, \$156,560 in 2009-2010, and \$161,260 in 2010-2011 for a total of \$469,820.

**EXAMPLE PERMANENT RATE LIMIT** (May or November election):

**Caption:** Permanent Rate Limitation

**Question:** Should District be authorized to impose \$3.50 per \$1000 of assessed value as a permanent rate limit beginning 2008-2009?

**Summary:** The measure will establish a permanent tax rate limit for the new Sample Service District. In the first year of imposition it is estimated that the proposed rate will raise \$42,000 for the new district. The taxes will be used to pay for the general operations of the district.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 280.060

Hist.: REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 8-2000, f. & cert. ef. 8-3-00; REV 5-2009, f. & cert. ef. 7-31-09; REV 17-2010, f. 12-17-10, cert. ef. 1-1-11

## 150-294.175(2)-(B)

### Estimates of Expenditures for Assessment and Taxation

(1) On or before May 1 of each year, each county must file with the Department of Revenue an estimate of expenditures for assessment and taxation as required by ORS 294.175 in order to participate in the grant program provided under ORS 294.178 for the tax year beginning on July 1.

(2) The county must file an amended estimate of expenditures no later than June 1 if it determines there is a need to increase or decrease its estimated expenditures.

(3) The amended filing must be filed in the same manner as the original application.

(4) The department will review the amended filing using the review standards and criteria for determining adequacy of resources that were applicable to the original filing.

Stat. Auth.: ORS 305.100 & 294.175

Stats. Implemented: ORS 294.175

Hist.: REV 6-2003, f. & cert. ef. 12-31-03; REV 3-2010(Temp), f. & cert. ef. 3-9-10 thru 8-31-10; Administrative correction 9-22-10; REV 17-2010, f. 12-17-10, cert. ef. 1-1-11

## 150-307.126

### Removal of Value of Federal Communication Commission (FCC) Licenses from the Unit Value of Centrally Assessed Property

(1) ORS 308.655 provides that the Department of Revenue has the authority to prescribe rules and regulations regarding property assessed under ORS 308.505 to 308.665. These statutes require the department to assess all property, real and personal, tangible or intangible, used or held for future use by a company as owner, occupant, lessee, or otherwise, for or in use in performing or maintaining a communications business.

(2) ORS 308.555 states the department may use unitary valuation to value all property of the company.

(3) For purposes of this rule, unitary valuation means valuing an integrated group of assets functioning as an economic unit as "one thing," without reference to the independent value of the component parts. The value of a component part in a communication company lies not in the fact that the component part has an independent market value separate and apart from the unit, but that the component part is a part of a thoroughly complete and integrated communications company and has been valued as such. To determine the unitary value, one or more approaches to value are reconciled to arrive at a correlated system value, otherwise known as a unitary value.

(4) FCC licenses are exempt from ad valorem property taxation under ORS 307.126.

(5) A unitary valuation is used in developing the value of the total property centrally assessed under ORS 308.505 to 308.665. The contributory value of FCC licenses will be removed from the final correlated system value.

(6) The contributory value of the FCC licenses will be removed by applying a market-to-book ratio to the original cost of the FCC license. The market-to-book ratio is calculated by dividing the correlated system value by the net book value of the system's taxable property (including the net

book value of the FCC license value). The resulting ratio is then multiplied by the company's reported FCC license cost to determine the estimated contributory license value to be subtracted from the correlated system value.

(7) For businesses that have been given FCC licenses and have no booked cost for the FCC license(s), the department will estimate a cost for the FCC licenses. The department will estimate the cost by considering various FCC license characteristics including but not limited to: frequency, geographical area, population served and date of acquisition.

Stat. Auth.: ORS 305.100, 308.205(2), 308.655

Stats. Implemented: ORS 307.126

Hist.: REV 17-2010, f. 12-17-10, cert. ef. 1-1-11

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**Rule Caption:** Defining 'moist snuff'; defining petroleum products subject to load fee; required electronic funds transfer payments.

**Adm. Order No.:** REV 18-2010

**Filed with Sec. of State:** 12-17-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 150-465.101(5)-(B)

**Rules Amended:** 150-293.525(1)(b), 150-323.500(9)

**Rules Repealed:** 150-465.101(5)-(B) (T), 150-323.500(9) (T)

**Subject:** 150-293.525(1)(b) is amended to delete an outdated reference to Treasury Regulation 31.6302-1. The rule currently provides the reference is to the regulation as in effect on December 31, 2004. However, the legislature has updated Oregon's connection to federal tax laws to those in effect on December 31, 2009.

150-323.500(9) relates to the tobacco tax program. We are proposing an amendment to clarify the types of products included in the definition of "moist snuff" for purposes of the "other tobacco products tax."

150-465.101(5)-(B) is adopted to clarify that for purposes of determining the petroleum load fee under ORS 465.104, "petroleum products" includes products blended with biodiesel or alcohol products.

150-323.500(9) TEMP is proposed for repeal due to the adoption of a permanent rule.

150-465.101(5)-(B) TEMP is proposed for repeal due to the adoption of a permanent rule.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

## 150-293.525(1)(b)

### Notification of Requirement to Make Payments by Electronic Funds Transfer; Penalty for Noncompliance; Exceptions

(1) Any person, required by federal law to make federal corporation estimated tax payments or federal payroll tax payments by means of electronic funds transfer (EFT), is also required to make such payments by EFT for Oregon corporation estimated tax (ORS 314.518) and Oregon combined quarterly payroll taxes and assessments (ORS 316.198).

(2) The department will notify a person, in writing, of the requirement to make payments by EFT. The notice will provide the person with information as to how to register and begin making EFT payments, and will inform the person of the penalty for failure to comply.

(3) If a person does not begin making payments by EFT within 90 days after notification, as described in section (2), a penalty may be assessed equal to five percent of the payments made by means other than EFT received after the 90 days has expired.

(4) A penalty will not be assessed against payments made by means other than EFT if at the time payment is due:

(a) The person is not required to make such payments by EFT for federal purposes;

(b) Payment by electronic funds transfer is not possible because of the registration waiting period;

(c) The department's EFT system or the Automated Clearing House Network is not operational;

(d) The department has granted the person an exemption from the requirement to make payment by EFT; or

(e) Any other circumstance occurs which, in the judgment of the department, reasonably prevented the person from paying by EFT.

Stat. Auth.: ORS 305.100 & 293.525.

Stats. Implemented: ORS 293.525

Hist.: REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 18-2010, 12-17-10, cert. ef. 1-1-11

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## 150-323.500(9)

### Definition of Moist Snuff

(1) The provisions of this rule apply to distributions of tobacco products that occur after June 30, 2010.

(2) For purposes of ORS 323.500 through 323.645, "moist snuff" means:

(a) Any finely cut, ground, milled or powdered tobacco product that is not intended to be smoked or placed in the nasal cavity. It may or may not be contained within small, tea-bag like pouches. Words such as long cut, mid cut, fine cut and snus only describe minor differences of product that fit within this tobacco category.

(b) Any other products containing tobacco that are not intended to be consumed by combustion. Examples include, but are not limited to:

(A) Dissolvable tobacco, which consists of finely-processed tobacco developed in such a way as to allow the substance to dissolve on the tongue or in the mouth and includes strips, sticks, orbs, and compressed tobacco lozenges.

(B) Other chewing tobacco and other leaf tobacco products to which artificial or natural substances have been added during processing. Such substances may include but are not limited to: sweeteners, sugars, molasses, licorice, mint, eucalyptus, tobacco leaf extract, betel nut, catchu, lime, saffron, thickeners, humectants, emulsifiers, colorants, texturizers, preservatives, taste enhancers, firming agents, adhesives, and punk ash. Examples include, but are not limited to:

(i) Shredded tobacco leaves, such as those sweetened and packaged loosely in aluminum lined pouches;

(ii) Plug tobacco, such as enriched tobacco leaves flavored and sweetened with licorice and formed into bricks or flat blocks; and

(iii) Twist tobacco, such as tobacco that is spun and rolled into rope-like strands and to which tobacco leaf extract has been added.

Stat. Auth.: ORS 305.100 & 323.575

Stats. Implemented: ORS 323.500

Hist.: REV 7-2009(Temp), f. & cert. ef. 10-7-09 thru 3-31-10; REV 10-2009, f. 12-21-09, cert. ef. 1-1-10; REV 7-2010(Temp), f. 5-27-10, cert. ef. 6-30-10 thru 12-27-10; REV 18-2010, 12-17-10, cert. ef. 1-1-11

## 150-465.101(5)-(B)

### Definition of "Petroleum Product"

As used in ORS 465.101 through 465.131, "petroleum product" includes blends of petroleum products mandated by ORS 646.905 through 646.963, such as diesel that contains a percentage of biodiesel, or gasoline that contains a percentage of ethanol.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 465.101

Hist.: REV 13-2010(Temp), f. & cert. ef. 8-19-10 thru 2-14-11; REV 18-2010, 12-17-10, cert. ef. 1-1-11

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**Rule Caption:** Defining "obtained the credit" for taxpayers that purchase a business energy tax credit.

**Adm. Order No.:** REV 19-2010(Temp)

**Filed with Sec. of State:** 12-17-2010

**Certified to be Effective:** 12-17-10 thru 5-31-11

**Notice Publication Date:**

**Rules Amended:** 150-315.354

**Subject:** The rule is amended to provide immediate guidance through a temporary rule for the meaning of "obtained the credit" as used in ORS 315.354(5)(d) and as amended by HB 3680 from the 2010 legislative session. To update the information in subsection (2) and remove subsections (1), (3) and (4) as that information is outdated. To clarify that a taxpayer must receive a tax credit certificate prior to claiming the credit.

**Rules Coordinator:** Debra L. Buchanan—(503) 945-8653

## 150-315.354

### Business Energy Tax Credit: Eligibility

(1) The energy conservation facility tax credit authorized by ORS 315.354 may be claimed by eligible applicants, as determined under ORS 469.185 to 469.225, 315.354 to 315.357 and related administrative rules. See Chapter 330, Division 90 of the Oregon Administrative Rules (e.g., OAR 330-90-0105) for additional information.

(2) Under ORS 315.354(5)(d), a transferee of an energy conservation facility tax credit may not claim the credit for a tax year prior to the tax year in which the transferee obtains the credit from a facility owner. The transferee may obtain the credit only after written authorization is provided by the Department of Energy to the transferee confirming that the energy facility is complete and approved for final certification. The transferee is con-

sidered to have "obtained the credit" for purposes of ORS 315.354(5)(d) at the point in time that the facility owner receives from the transferee the required cash payment in an amount equal to the present value of the credit, as determined by the Department of Energy.

(3) A taxpayer must receive a tax credit certificate from the Department of Energy under ORS 469.215 prior to claiming the credit.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.354

Hist.: 12-31-81; 12-31-88; 12-31-89; 12-31-90; 12-31-91; 12-31-92, Renumbered from 150-317.104; 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 19-2010(Temp), f. & cert. ef. 12-17-10 thru 5-31-11

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## Department of Transportation

### Chapter 731

**Rule Caption:** Application process for economic development projects unable to meet TPR requirements related to state highways.

**Adm. Order No.:** DOT 3-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 12-22-10

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 731-017-0005, 731-017-0010, 731-017-0015, 731-017-0020, 731-017-0025, 731-017-0030, 731-017-0035, 731-017-0040, 731-017-0045, 731-017-0050, 731-017-0055

**Subject:** ODOT adopted these rules to carry out the state policy established in ORS 367.850. This statute requires the Oregon Transportation Commission to adopt rules to facilitate projects that support local economic development and job creation but cannot meet the funding or timing requirements of the Land Conservation and Development Commission's Transportation Planning Rule (TPR) related to state highways. These rules are not intended to supersede any requirements of the TPR; rather, they are intended to encourage innovation and flexibility in the application of traffic performance measures, timing and funding requirements adopted pursuant to the TPR associated with amendments to comprehensive plans and land use regulations, including zone changes.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 731-017-0005

### Purpose

This division is intended to carry out the state policy outlined in ORS 367.850 to facilitate projects that support local economic development and job creation but cannot meet the funding or timing requirements of the Land Conservation and Development Commission's Transportation Planning Rule related to state highways. This division is not intended to supersede any requirements of the Transportation Planning Rule; rather, it is intended to encourage innovation and flexibility in the application of traffic performance measures, timing and funding requirements adopted pursuant to the Transportation Planning Rule associated with amendments to comprehensive plans and land use regulations, including zone changes. This innovation and flexibility extends beyond that already permitted under OAR 660-012-0060(2) and through existing applications of Oregon Highway Plan alternate mobility standard processes.

Statutory Auth.: ORS 184.616, 184.619, 367.850

Stats. Implemented: ORS 367.850

Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

## 731-017-0010

### Definitions

For the purposes of this division, the following definitions shall apply:

(1) "Amendment" means a proposed amendment to a comprehensive plan, transportation system plan or land use regulation.

(2) "Commission" means the Oregon Transportation Commission.

(3) "Director" means the Director of the Oregon Department of Transportation or the designee thereof.

(4) "Economic development projects" means those projects that demonstrate the direct benefits in terms of "primary" jobs created or retained by the development opportunity. Primary jobs are those in such areas as manufacturing, production, warehousing, distribution, or others that create new wealth for the Oregon economy.

(5) "Funding requirements" means the requirements set out in the Transportation Planning Rule that require a funding plan for transportation facilities or improvements needed to avoid a significant effect on existing or planned transportation facilities (OAR 660-012-0060(2)(b)); a written

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statement from ODOT that the proposed funding and timing for identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of an affected state highway (660-012-0060(3)(c)); a written statement from ODOT that improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan are reasonably likely to be provided by the end of the planning period (660-012-0060(4)(b)); or a written statement from ODOT that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system (660-012-0060(4)(c)).

(6) "Interim period" means the period, not to exceed 20 years, between when construction of an economic development project begins and construction of the project ends.

(7) "Local government" means any city, county or metropolitan service district formed under ORS Chapter 268, or an association of local governments performing land use planning functions under ORS 195.025.

(8) "Long-term economic benefits" means the net economic benefits anticipated to occur from an economic development project following completion of construction.

(9) "ODOT" means the Oregon Department of Transportation.

(10) "ODOT Region" refers to the five regions operated by ODOT. For the purposes of this division the ODOT Regions are defined as follows: Region One consists of Clackamas, Columbia, Hood River, Multnomah and Washington Counties. Region Two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties. Region Three consists of Coos, Curry, Douglas, Jackson and Josephine Counties. Region Four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties. Region Five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.

(11) "Oregon Highway Plan (OHP)" means the 1999 Oregon Highway Plan, as adopted and amended by the Oregon Transportation Commission, which serves as ODOT's modal system plan for highways as set forth in OAR chapter 731, division 15, consistent with OAR 660-012-0015(1).

(12) "Planning period" means the planning horizon identified in an adopted local or regional transportation system plan.

(13) "Reasonably likely" means a determination by ODOT pursuant to OAR 660-012-0060 that funding to construct a planned improvement to a state highway included in a regional or local transportation system plan or comprehensive plan is likely to be available by the end of the planning period.

(14) "Significantly affect" is as defined in OAR 660-012-0060(1).

(15) "State Agency Coordination Agreement (or Program) (SAC)" means the agreement adopted by the Commission in September 1990 as part of the Unified Transportation Plan required by ORS 184.618 and certified by the Land Conservation and Development Commission in December 1990 as being in compliance with ORS 197.180 and OAR chapter 660, divisions 30 and 31. The SAC describes what ODOT will do to meet its obligation under ORS 197.180 to carry out its programs affecting land use in compliance with the statewide planning goals and in a manner compatible with acknowledged comprehensive plans.

(16) "State highways" means highways under the jurisdiction and/or control and management of ODOT, including interstate highways within the State of Oregon.

(17) "Traffic performance measures" means the minimum acceptable standards of performance for highway facilities identified in an adopted state, regional or local transportation system plan or comprehensive plan. For state highways, traffic performance is measured by volume to capacity ("v/c") ratios as defined in the Oregon Highway Plan. Modifications to traffic performance measures for state highways require amendments to the OHP.

(18) "Transportation Planning Rule" means the Land Conservation and Development Commission's administrative rule governing transportation planning, set out at OAR chapter 660, division 12.

(19) "Transportation System Plan" means a plan for one or more transportation facilities adopted in accordance with the Transportation Planning Rule that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.

(20) "Volume to capacity ratio" is a measure of roadway congestion, calculated by dividing the number of vehicles passing through a section of highway during the peak hour by the capacity of the section as described and defined in the Oregon Highway Plan.

Statutory Auth: ORS 184.616, 184.619, 367.850

Stats. Implemented: ORS 367.850

Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

## 731-017-0015

### Applications for Time Extensions, Alternative Funding Plans, or Adjustments or Alternatives to Traffic Performance Measures

(1) When a local government amendment needed to authorize an economic development project cannot meet the funding requirements of the Transportation Planning Rule as they relate to state highways, the local government may apply for:

(a) An extension of time to meet the requirements of OAR 660-012-0060(2)(b), 660-012-0060(4)(b)(D) or 660-012-0060(4)(c)(A);

(b) Approval of a plan proposing alternative methods of funding that meets the provisions in this division;

(c) An adjustment to existing traffic performance measures or allowance to use an alternative traffic performance measure other than a volume to capacity ratio with a proposed acceptable level of performance during an interim period prior to completion of construction of an economic development project for a period of no more than 20 years; or

(d) An adjustment to existing traffic performance measures or allowance to use an alternative traffic performance measure other than a volume to capacity ratio with a proposed acceptable level of performance that address the specific traffic impacts of an economic development project.

(2) Applications under subsection (1) of this Section shall be filed with ODOT for Commission review and approval. The Commission may approve up to four applications in each ODOT Region in a calendar year.

(3) The provisions of this rule do not apply to Commission approval of alternate mobility standards authorized and processed pursuant to OHP Policy 1F Action 1F.3 in system or facility planning processes.

Statutory Auth: ORS 184.616, 184.619, 367.850

Stats. Implemented: ORS 367.850

Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

## 731-017-0020

### Application Submittal Requirements

(1) An application submitted pursuant to section 0015 of this division shall be filed with the Region Manager or designee of the ODOT Region within which the economic development project would be located.

(2) Prior to filing an application with ODOT pursuant to this division, the local government shall seek input from the public and affected local governments and agencies regarding the proposed application. Informal coordination with ODOT is encouraged at the earliest point possible to streamline the application process.

(3) Prior to filing an application, a pre-application meeting shall be held between the local government, the applicant for the amendment and the ODOT Region Manager or designee to determine the nature of the application and identify the applicable submittal requirements and review criteria. ODOT shall notify and provide opportunity for representatives from Business Oregon and/or the Department of Land Conservation and Development to submit comments and attend the meeting.

(4) All applications shall:

(a) Be accompanied by any appropriate forms provided by ODOT;

(b) Indicate the nature of the application request;

(c) Provide a narrative that:

(A) Identifies the economic development project for which an amendment to a comprehensive plan or land use regulation is being proposed;

(B) Identifies the state highways that would be significantly affected by the proposed amendment, their functional classifications and traffic performance measures, and the extent of non-compliance with the traffic performance measures;

(C) Identifies the basis for the determination that improvements to state highways are not reasonably likely to be provided by the end of the planning period or that the funding or timing for mitigation measures are insufficient to avoid adverse impacts;

(D) Demonstrates the net long-term economic development benefits of the proposed economic development project, including:

(i) An estimate of the number of net new primary jobs the amendment is likely to create within the community and their associated average salary.

(ii) A statement of reasons why the proposal merits approval by the Commission under this division.

(E) Addresses how the application meets the specific criteria in sections 0025 through 0035 of this division, as appropriate, and the review criteria in section 0040 of this division.

(F) Explains why compliance with OAR 660-012-0060(1) cannot otherwise reasonably be accomplished through one or a combination of the measures in 660-012-0060(2), including the phasing of development over time, access management measures, or the use of trip caps.



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(G) Addresses how the project will impact traffic safety along the state highway corridor.

(H) Addresses how the project will impact the movement of freight along an affected state highway that is a freight route.

(I) Identifies the public involvement and local government coordination opportunities that have been provided with respect to the application.

(d) Be accompanied by attachments that provide background information supporting the application and proposed amendment, such as a copy of the amendment application filed with the local government, a description of the proposed economic development project, a map showing the affected area and the location of affected state highways, any transportation analyses and studies submitted with the amendment application, a copy of any reasonably likely determination provided by ODOT, and other relevant information.

(5) Applications affecting lands within one-half mile of an interstate interchange area as defined in OAR 660-012-0060(4)(d)(C) also shall address how the application is consistent with the following:

(a) An adopted Interchange Area Management Plan, if one exists.

(b) The function of the interchange.

(c) ODOT access management requirements for the interchange.

(6) Within 14 days following receipt of an application, the Region Manager or designee shall notify a local government whether the application is complete. If notified that the application is incomplete, the local government may choose to provide the missing information or to present it as written. If presented as written, the extent of incompleteness shall be noted in the Director's report prepared pursuant to section 0040 of this division. Where incomplete information impedes the Director's review for compliance with criteria, the Director shall so note in the Director's report and may recommend denial of the application.

(7) A local government shall not have more than one application approved by the Commission pursuant to this division within a calendar year.

(8) Where a local government application filed pursuant to this division has been approved by the Commission within the previous three calendar years, the same local government shall not file any additional applications pursuant to this division for property located within the identified traffic impact area of the economic development project that was the subject of the previously approved application.

Statutory Auth: ORS 184.616, 184.619, 367.850

Stats. Implemented: ORS 367.850

Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

## 731-017-0025

### Additional Requirements for Time Extensions to Meet Funding Requirements

(1) In addition to the requirements of section 0020 of this division, an application requesting an extension of time to meet the requirements of OAR 660-012-0060(4)(b)(D) or 660-012-0060(4)(c)(A) shall include the following additional information:

(a) The additional time period being requested from the OTC, up to a maximum of 20 years from the date of application.

(b) If applying for an extension of the time requirement in OAR 660-012-0060(4)(c)(A), the identified mitigation improvements or measures for which a time extension is needed to avoid a significant adverse impact on the Interstate Highway system.

(c) An explanation why OTC approval of a time extension is reasonable and necessary.

(d) An explanation of what will be accomplished during the additional time period that makes compliance with OAR 660-012-0060(1) likely by its conclusion.

(e) A discussion of whether and how an extension of time might adversely impact other existing uses in the community or along a corridor.

(2) Applications for time extensions beyond what is authorized in the OHP require OHP amendments and must be approved by the Commission. Pursuant to ODOT's State Agency Coordination Agreement, any such amendment must comply with the coordination procedures in OAR 731-015-0065.

Statutory Auth: ORS 184.616, 184.619, 367.850

Stats. Implemented: ORS 367.850

Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

## 731-017-0030

### Additional Requirements for Alternative Funding Plans

(1) In addition to the requirements of section 0020 of this division, an application requesting approval of an alternative funding plan shall include the following additional information:

(a) An estimate of the additional funds required to construct needed state highway facilities or improvements or provide identified mitigation improvements or measures.

(b) A description of the proposed alternative funding method and an explanation how it would be adequate to alleviate the funding shortfall.

(c) An explanation why implementation of the proposed alternative funding method is feasible and likely to occur.

(d) If the proposed alternative method requires participation by other public or private entities, such as contributions from employers or other parties directly benefitting from an economic development project, a demonstration of commitment by such other entities to participate in the funding method.

(2) Applications for alternative funding plans must be approved by the Commission.

Statutory Auth: ORS 184.616, 184.619, 367.850

Stats. Implemented: ORS 367.850

Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

## 731-017-0035

### Additional Requirements for Adjustments or Alternatives to ODOT Traffic Performance Measures

(1) In addition to the requirements of section 0020 of this division, an application to adjust traffic performance measures or to allow use of alternative traffic performance measures including measures other than a volume to capacity ratio shall include the following additional information:

(a) Identification of the existing traffic performance measures and a description of the adjusted or alternative traffic performance measures being requested to accommodate the economic development project, including the geographic boundaries of the requested adjustment or alternative measures.

(b) An explanation how the proposed adjusted or alternative traffic performance measures protect the function of affected state highway facilities.

(c) Methodologies and procedures for applying the adjusted or alternative traffic performance measures, including the level of performance being sought under the new measure.

(d) If the proposal is to adjust existing traffic performance measures or allow use of alternative traffic performance measures during an interim period prior to completion of construction of the development:

(A) The proposed length of the interim period and what will be achieved during that interim period.

(B) An explanation of what will need to occur for the significantly affected transportation facility to be brought up to the current traffic performance measure by the end of the interim period.

(e) An explanation how Commission approval of the requested adjustment or use of alternative traffic performance measures would impact affected state highway corridors and the local government's ability to implement its adopted transportation system plan or comprehensive plan.

(2) Applications to adjust or allow alternative traffic performance measures for state highways require OHP amendments and must be approved by the Commission. Pursuant to ODOT's State Agency Coordination Agreement, any such modification must comply with the coordination procedures in OAR 731-015-0065.

Statutory Auth: ORS 184.616, 184.619, 367.850

Stats. Implemented: ORS 367.850

Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

## 731-017-0040

### ODOT Review and Report to Commission

(1) Within 30 days following receipt of a complete application or an incomplete application presented as written, the Director shall submit to the Commission a report and recommendation on the application.

(2) The Director's report shall:

(a) Identify the applicant and the nature of the application.

(b) Identify the ODOT Region from which the application originated and the number of applications within that Region that have already been approved under this division during the current calendar year.

(c) Address consistency with the applicable submittal criteria in section 0020 of this division and with the review criteria in this section.

(d) Include ODOT's recommendation on the application and the reasons for that recommendation.

(3) In evaluating applications submitted pursuant to this division, the Director shall consider the following:

(a) Whether the economic development project for which amendments are needed can reasonably comply with the requirements in OAR 660-012-0060 without having to apply for a time extension or alternative

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funding plan or a proposal to adjust or allow use of alternative traffic performance measures under this division.

(b) Based on consultation with Business Oregon, the net long-term primary job creation benefits of the proposed economic development project. Any written materials from Business Oregon will be attached to the ODOT Director's report.

(c) The adverse impacts approval of the proposed project would have on state transportation facilities, measured in terms of the degree of divergence from existing state highway traffic performance measures, the length of time the divergence would remain in effect, the scale of short and long-term impacts on existing users of the facilities, the safety of users of the facilities, and impacts on neighboring communities.

(d) Local government and private sector commitments to contribute financially to needed state highway and local road improvements that will mitigate state highway impacts.

(e) Local government and private sector commitments to employ interim measures where appropriate, including but not limited to phasing of development or trip caps.

(f) Local government and private sector commitments to employ techniques that reduce vehicle trips on the system as appropriate for the scale and location of the development, including but not limited to transportation demand management, carpooling, transit and land use management methods.

(g) The level of public review and local government coordination associated with an application filed pursuant to this division.

(4) In addition to the conditions of approval required under section 0045 of this division, the Director may recommend conditions of approval for the Commission to attach to a decision approving an application filed pursuant to this division.

Statutory Auth: ORS 184.616, 184.619, 367.850  
Stats. Implemented: ORS 367.850  
Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

## 731-017-0045

### Commission Review and Decision on Applications

(1) Within 45 days following receipt of the Director's report, the Commission shall review the Director's report and issue a written decision approving or denying the application. Commission approval or denial of an application shall be accompanied by findings of fact and a statement of reasons explaining how the decision relates to the applicable review standards. If a public hearing is required on the application, the Commission shall schedule the public hearing and allow for the required public review period. The Commission may approve up to four applications in each ODOT Region in a calendar year. The Commission may attach such conditions to its approval as it deems necessary or appropriate to protect the function or ensure the safe operation of state highways or to protect the state's substantial financial investment in its state highway system.

(2) Once the Commission has approved four applications within an ODOT Region within a calendar year, it may continue its consideration of one or more applications within that ODOT Region to the following calendar year. Continuation of an application to the following calendar year shall not imply any preference or priority for that application.

(3) A Commission decision to approve an application shall be conditioned to limit the allowed uses on the property that is the subject of the proposed amendment to only those uses specifically identified in the proposed economic development project. A local government may achieve this result through application of a limited use overlay zone, the creation of a new zoning district, or other similar method.

(4) A Commission decision to approve an application to adjust traffic performance measures or allow use of alternative traffic performance measures other than a volume to capacity ratio shall be conditioned to apply only to the facility impact area that is the subject of the proposed local government amendment.

Statutory Auth: ORS 184.616, 184.619, 367.850  
Stats. Implemented: ORS 367.850  
Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

## 731-017-0050

### Land Use Decisions

(1) Commission determinations made pursuant to this division concerning the financing of transportation facilities and improvements are not considered land use decisions.

(2) Commission actions made pursuant to this division to extend the time beyond the maximum planning horizon established in the OHP and to adjust or allow alternative traffic performance measures are considered land use decisions and require OHP amendments.

Statutory Auth: ORS 184.616, 184.619, 367.850  
Stats. Implemented: ORS 367.850  
Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

## 731-017-0055

### Review and Update

Beginning two years following the adoption of this division, the Commission shall commence a review to evaluate implementation of and consider possible modifications to this division. This evaluation shall include considerations of the cumulative effects from applications that have been approved.

Statutory Auth: ORS 184.616, 184.619, 367.850  
Stats. Implemented: ORS 367.850  
Hist.: DOT 3-2010, f. & cert. ef. 12-22-10

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**Rule Caption:** Multimodal Transportation Fund Program.

**Adm. Order No.:** DOT 4-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 12-22-10

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 731-035-0070

**Subject:** ODOT's rules did not previously address how earnings on lottery bond proceeds will be used. This amended rule will dedicate those earnings to passenger rail to provide funds for passenger rail projects and enable Oregon to compete for substantial federal capital funding available to states with matching funds for passenger rail programs.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 731-035-0070

### Grant and Loan Awards and Match

(1) At least five percent of the net proceeds of the lottery bonds will be allocated to Rural Airports.

(2) Once a project is selected by the Commission under 731-035-0060(11) and (12) the amount of monies identified by the Commission is considered allocated from the Fund to a Recipient. If an Agreement with a Recipient has not been executed within 180 days from such date, the grant is deemed terminated, and the funds may be reassigned by the Commission. The Commission, notwithstanding 731-035-0060(12), may select the highest priority Project that is appropriate for the funds available from the Final Recommendation Report, created in 731-035-0060(8) or from the Rural Airport Recommendation Report, created in 731-035-0060(5).

(3) To the extent that proposed Projects meet the qualifications established in OAR 731-035-0050 and 731-035-0060, at least 10 percent of the total net proceeds of the lottery bonds will be allocated to each of the five regions as specified in Chapter 865, OL 2009. The regions consist of the following counties:

(a) Region one consists of Clackamas, Columbia, Hood River, Multnomah and Washington Counties;

(b) Region two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties;

(c) Region three consists of Coos, Curry, Douglas, Jackson and Josephine Counties;

(d) Region four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties; and

(e) Region five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.

(4) Applicants may use a combination of grant and loan funds to finance a Project.

(5) Grants and loans will be awarded only when there are sufficient funds available in the Multimodal Transportation Fund to cover the costs of the loans and grants.

(a) Grants:

(A) Awards must not exceed 80 percent of the total eligible Project costs.

(B) Applicant matching funds must be provided by the Applicant in the form of monetary outlay for elements necessary for implementation of the Project, including land, excavation, permits, engineering, payroll, special equipment purchase or rental, and cover at least 20 percent of the eligible Project costs.

(b) Loans:

(A) Loans may be for any portion of project costs, up to the full amount of the project.

(B) The Department will not charge fees for processing or administering a loan to a Recipient.

(C) Loans from the Multimodal Transportation Fund may be interest free if repaid according to the terms and conditions of the Agreement between the Department and Recipient.

# ADMINISTRATIVE RULES

(D) Prior to entering into a loan Agreement, the Department will determine if an application meets reasonable underwriting standards of credit-worthiness, including whether:

(i) The Project is feasible and a reasonable risk from practical and economic standpoints.

(ii) The loan has a reasonable prospect of repayment according to its terms.

(iii) The Applicant's fiscal, managerial and operational capacity is adequate to assure the successful completion and operation of the Project.

(iv) The Applicant will provide good and sufficient Collateral to mitigate risk to the Multimodal Transportation Fund.

(6) Notwithstanding any other provision of division 35 rules, earnings on moneys in the Multimodal Transportation Fund shall be used for grants or loans for passenger rail projects; including, but not limited to, projects where the Department of Transportation seeks match funds for a federal grant. The Oregon Transportation Commission shall select passenger rail projects for grants or loans of moneys from the earnings of the Multimodal Transportation Fund in accordance with ORS 367.084. Nothing within this rule shall prevent an application by, or consideration of, a passenger rail project for a grant or loan of other moneys within the Multimodal Transportation Fund.

Stat. Auth.: ORS 184.616, 184.619 & 367.082

Stats. Implemented: ORS 367.080 - 367.086

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 4-2010, f. & cert. ef. 12-22-10

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

**Rule Caption:** Specifies Procedures and Requirement for the Collection and Transfer of County and District Registration Fees.

**Adm. Order No.:** DMV 22-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 12-22-10

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 735-032-0065

**Subject:** This rulemaking implements legislation enacted by the 2009 Legislative Assembly. In pertinent part, ORS 801.040, 801.041, 801.042, 802.110, and 803.445 authorize Oregon counties and districts to impose vehicle registration fees that are in addition to state vehicle registration fees. ORS 803.445 requires DMV to implement these statutes by administrative rule. A county or district that chooses to impose its own vehicle registration fees must adopt an ordinance establishing the fees, and enter into an intergovernmental agreement with DMV. DMV is required to collect vehicle registration fees on behalf of any county or district that has established registration fees, and to transfer collected fee amounts to the county or district after deducting DMV's expenses for the collection, transfer and administration of the fees.

Chapter 865, Oregon Laws 2009, which became effective September 28, 2009, amended ORS 801.041 to authorize Oregon counties with a population of 350,000 or more to impose county vehicle registration fees to fund the construction of a bridge that crosses the Willamette River in the City of Portland. For this purpose, Multnomah County adopted Multnomah County Ordinance MCC §§ 11.250-11.256 to impose Multnomah County vehicle registration fees on certain vehicles within Multnomah County, pursuant to amended ORS 801.041. The ordinance became effective September 1, 2010.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

### 735-032-0065

#### Collection of County or District Registration Fees

(1) This rule specifies the procedures and requirements when DMV collects county or district registration fees pursuant to ORS 801.040, 801.041, 801.042 and 803.445.

(2) As used in this rule the following definitions apply:

(a) "County" means a unit of local government as defined in ORS 190.003.

(b) "County or district ordinance" means an ordinance enacted by the governing body of a county or district establishing registration fees imposed on subject vehicles.

(c) "County or district registration fees" means county vehicle registration fees or district vehicle registration fees established and imposed under a county or district ordinance and collected by DMV upon registration and renewal of registration of a subject vehicle.

(d) "District" means a unit of local government as defined in ORS 190.003 and includes a mass transit or transportation district, or a metropolitan service district, as defined in ORS 801.237.

(e) "Merchant fee" means the fee charged to DMV by a credit or debit card company to process a credit or debit card transaction. DMV is charged a merchant fee each time a customer pays registration fees, including county or district registration fees, using a credit or debit card.

(f) "Registration" means the initial recording of a vehicle as authorized for use within the State of Oregon pursuant to ORS 803.350.

(g) "Registration renewal" or "renewal" means an extension of registration.

(h) "State registration fees" means the fee amounts collected under ORS 803.420 upon initial registration or registration renewal of a vehicle authorized to operate for use within the State of Oregon pursuant to ORS 803.350.

(i) "Subject vehicle" means a vehicle registered or required to be registered at a residence or business address within a county or district and which is subject to a county or district registration fee.

(3) DMV will collect county or district registration fees, upon request of a county or district qualified under ORS 801.041 or 801.042 to impose vehicle registration fees. DMV will collect county or district registration fees in addition to state registration fees.

(4) Before collecting county or district registration fees, the county or district must enter into an intergovernmental agreement with DMV. The intergovernmental agreement will include the following:

(a) A citation of the county or district ordinance number authorizing the imposition of county or district registration fees and granting DMV authority to collect county or district vehicle registration fees;

(b) A description of each vehicle type subject to county or district registration;

(c) For each vehicle type subject to county or district registration fees, the county or district registration fee amount(s) and the registration period(s);

(d) The date DMV will begin collecting county or district registration fees;

(e) A per-transaction administrative fee to cover DMV expenses, which will be deducted prior to transfer of county or district registration fees to the county or district. A per-transaction administrative fee does not include merchant fees, refunds or uncollectible debt;

(f) A description of how and when the moneys collected by DMV under the agreement are paid to the county or district after the deduction of DMV's expenses for collection, transfer and administration of county vehicle registration fees, and any deduction for credits described in ORS 803.445(5); and

(g) The method for resolving disputes regarding imposition and collection of a county or district registration fee by a vehicle owner and payment of a refund if it is determined a fee was collected in error or it is determined no county or registration fee is owing.

(5) DMV will transfer to the county or district the moneys due on a monthly basis unless another basis is established in the intergovernmental agreement between DMV and the county or district.

(6) This rule shall apply to collection of county or district registration fees beginning September 1, 2010.

Stat. Auth.: ORS 184.616, 184.619, 190.110, 801.040, 801.041, 801.042, 802.010, 802.110, 803.420 & 803.445

Stats. Implemented: ORS 801.040, 801.041, 801.042, 802.110, 803.420 & 803.445

Hist.: DMV 22-2010, f. & cert. ef. 12-22-10

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**Rule Caption:** Waives Customized Plate Fee for the Congressional Medal of Honor Registration Plate.

**Adm. Order No.:** DMV 23-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 735-046-0050



# ADMINISTRATIVE RULES

**Subject:** This rulemaking implements legislation enacted by the 2010 Special Legislative Assembly:

DMV issues a special license plate honoring individuals awarded the Congressional Medal of Honor—the Congressional Medal of Honor registration plate. Because the plate is a customized registration plate, an applicant pays a customized plate fee, in addition to all other fees required for registration plates. The fee for a pair of customized registration plates is an annual fee of \$50.

At the time of initial registration or renewal of registration, DMV collects \$100 for a two-year registration period or \$200 for a four year registration period. The fee for a duplicate or replacement customized registration plate is \$5.00 at the time of registration renewal or \$10 at any other time.

Chapter 61, Oregon Laws 2010, amended ORS 805.103, in part, to authorize DMV to waive the customized registration plate fees established under ORS 805.250 for qualified applicants for the Congressional Medal of Honor registration plate. The legislative measure was introduced at the request of the Senate Interim Committee on Veterans' Affairs.

DMV has amended OAR 735-046-0050 to waive the annual customized registration plate fee for the Congressional Medal of Honor registration plate. DMV is not waiving the duplicate or replacement customized registration plate fee.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-046-0050

### Congressional Medal of Honor, Elected Official and Consular Corps Plates

(1) Requirements and Qualifications. In addition to all other requirements for registration, an applicant for Congressional Medal of Honor plates, elected official plates or consular corps plates must submit to DMV an application for registration and all applicable fees, including any fee required for the custom plate requested. At the time of application, the applicant must be the registered owner of the vehicle listed on the application and:

(a) For Congressional Medal of Honor recipients, meet the qualifications for issuance of Congressional Medal of Honor plates under ORS 805.103 and this rule;

(b) For elected officials, meet the qualifications of ORS 805.220, and hold the office specified on the application. DMV may contact the Secretary of State to verify compliance with this subsection;

(c) For consular corps plates, provide proof to DMV that the applicant is appointed by a foreign government as an honorary consul and is acting in that capacity. Proof under this subsection is a copy of the applicant's current Consular Identification Card issued by the U.S. Department of State, Office of Protocol.

(2) For purposes of section (1) of this rule, the annual custom plate fee set forth in ORS 805.250(2)(a) for issuance or renewal of Congressional Medal of Honor plates is waived and is not a required fee.

(3) Elected official plates are assigned to a specific vehicle and — if requested by the applicant — are issued in addition to the regular registration plates issued to the vehicle. The fee for an elected official plate issued in addition to a regular series plate is the plate manufacturing fee established under ORS 803.570. Elected official plates may be transferred to another vehicle if:

(a) The vehicle to which the plates are to be transferred is registered in the name of the elected official who qualifies for the particular plate configuration; and

(b) The applicant submits to DMV a completed application that identifies the vehicle to which the elected official plates are to be assigned.

(4) Consular corps plates are assigned to a specific vehicle and may only be transferred to another vehicle under section (4) of this rule.

(5) Plate Transfer. In addition to all other requirements for transferring registration plates, an applicant for a plate transfer must submit to DMV a completed, signed application to transfer registration plates and all applicable fees. At the time of transfer, the applicant must be the registered owner of the vehicle listed on the application. There is no plate transfer fee for elected official plates.

(6) Plate Configurations. The following plate configurations are reserved as specified:

(a) For Congressional Medal of Honor recipients: Except as provided in paragraph (B) of this subsection, the applicant may choose the letter

combination "MOH" or "CMH," which will be followed by a single number from 1 to 9, to be designated by DMV;

(A) A total of 18 pairs of Congressional Medal of Honor plates are reserved for issuance to qualified Congressional Medal of Honor recipients.

(B) When a Congressional Medal of Honor plate configuration is issued, it will be removed from the list of available plates and will not be issued again. For example, after plate configuration "CMH 1" is issued, that configuration is no longer available. The next qualified applicant is issued the next available plate number in numeric order.

(b) For elected officials:

(A) Governor: "GOVERNOR 1";

(B) Secretary of State: "SECRETARY OF STATE 2";

(C) State Treasurer: "STATE TREASURER 3";

(D) President of the Senate: "PRESIDENT OF THE SENATE 4";

(E) President pro tempore of the Senate: "SENATE PRESIDENT PRO TEMPORE 4A";

(F) Speaker of the House of Representatives: "SPEAKER OF THE HOUSE OF REPRESENTATIVES 5";

(G) Speaker pro tempore of the House: "SPEAKER OF THE HOUSE PRO TEMPORE 5A";

(H) State Senators: "STATE SENATOR" followed by the applicable Senate district number;

(I) State Representatives: "STATE REP." followed by the applicable House district number;

(J) U.S. Senator: "U.S. SENATOR" followed by the number 1 or 2, depending on seniority;

(K) U.S. Representative: "U.S. REP." followed by the House District number; and

(c) For consular corps plates: "OFFICIAL CONSULAR CORPS" followed by a number assigned by DMV.

(7) In addition to the elected official plate for the Governor under subsection (3)(b) of this rule, DMV will issue regular series plates to the Governor upon request from the Governor's office. The fee for a regular series plate issued under this section is the plate manufacturing fee established under ORS 803.570.

(8) The plates must be removed from the vehicle to which they are assigned when the person no longer qualifies for elected official plates or consular corps plates because the term of office or appointment expires, or the person otherwise ceases to act in the official capacity required to qualify for the plates. After removing the plates from the vehicle, the person may surrender the plates to DMV or retain the plates as a souvenir.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.103, 805.200, 805.205 & 805.220

Stats. Implemented: ORS 803.420, 803.530, 803.535, 805.103, 805.200, 805.220, 805.240, 805.242 & 805.250

Hist.: MV 25-1988, f. & cert. ef. 10-3-88; MV 13-1992, f. & cert. ef. 10-16-92; DMV 23-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 15-2008, f. & cert. ef. 6-23-08; DMV 22-2008, f. & cert. ef. 9-11-08; DMV 15-2009(Temp), f. & cert. ef. 8-24-09 thru 2-17-10; DMV 1-2010, f. & cert. ef. 1-28-10; DMV 23-2010, f. 12-22-10, cert. ef. 1-1-11

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**Rule Caption:** Implied Consent Hearings.

**Adm. Order No.:** DMV 24-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 735-090-0042

**Rules Amended:** 735-090-0000, 735-090-0020, 735-090-0101

**Subject:** A contested case hearing regarding a driver license suspension under the implied consent laws currently is conducted in person unless both parties agree to a telephone hearing. However, Chapter 37, Oregon Laws 2010 (HB 3601) amends ORS 813.410 such that the hearings are to be held by telephone or other two-way electronic device unless either the person or the police officer requests that the hearing be held in person. The law requires that DMV establish by rule the manner and time limitation requirements by which a person or a police officer may request that a hearing be conducted in person. Therefore, DMV has amended and adopted rules in OAR Chapter 735 Division 90 to include:

- A definition for an in-person hearing;
- Additional "other just cause" reasons for a hearing to be outside of the timeline required in statute;
- Information on how and when a petitioner may request an in-person hearing;
- A new rule establishing how and when a police officer may request an in-person hearing; and

# ADMINISTRATIVE RULES

• A clearer description of the location for holding an in-person hearing and a telephone hearing.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-090-0000

### Definitions

As used in OAR 735-090-0000 through 735-090-0120, unless the context requires otherwise:

(1) “Agency” means Driver and Motor Vehicle Services Division (DMV) of the Oregon Department of Transportation.

(2) “Error of the Department,” as used in ORS 813.440(1)(c), means:

(a) An act or omission of the agency or OAH, which by its occurrence, prevented the petitioning party from participating in a recorded or reported hearing that determines the validity of a suspension of driving privileges; or

(b) An act or omission of the agency or OAH in issuing a subpoena to a witness, including a police officer, to a recorded or reported hearing that determines the validity of a suspension of driving privileges and where the witness’ participation at the reported or recorded hearing is required in order for the agency to establish the required elements under ORS 813.410(6); or

(c) An act or omission of the agency or OAH in issuing a subpoena to a necessary witness where:

(A) The agency receives the petitioning party’s request to subpoena a necessary witness more than 72 hours prior to the time and date that a recorded or reported hearing that determines the validity of a suspension of driving privileges is scheduled; and

(B) The act or omission, by its occurrence, prevented the necessary witness from participating in the hearing; or

(d) An act or omission of the agency or OAH that prevents a recorded or reported hearing that determines the validity of a suspension of driving privileges from being conducted.

(3) “In-person hearing” means that at least one of the petitioning party and at least one agency witness are present in the same location as the Administrative Law Judge.

(4) “OAH” means the Office of Administrative Hearings when it is performing services on behalf of the agency under OAR chapter 735 division 90.

(5) “Other just cause” as used in ORS 813.440(1)(f) means:

(a) Circumstances beyond the reasonable control of the petitioning party and beyond the ability of a reasonable person to foresee, which:

(A) Prevented the petitioning party from filing a timely request for a hearing as set forth in ORS 813.410(3); or

(B) Prevented the petitioning party from requesting the agency or OAH to subpoena a necessary witness more than 72 hours prior to the time and date that a recorded or reported hearing that determines the validity of a suspension of driving privileges is scheduled; or

(C) Prevented the petitioning party from participating in a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(b) Circumstances where a petitioning party moves for a continuance of a hearing or a request that a necessary witness be subpoenaed to a hearing and, due to circumstances beyond the control of the petitioning party:

(A) The necessary witness does not appear at the hearing because the necessary witness was unknown to the petitioning party prior to a recorded or reported hearing that determines the validity of a suspension of driving privileges; or

(B) The necessary witness does not appear at the hearing and could not be served with a subpoena at least 72 hours prior to a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(c) Circumstances beyond the control of a petitioning party that require a continuance of a hearing because documentary evidence referred to or presented at the hearing by a necessary witness was not provided to the petitioning party either before or during the hearing.

(d) Circumstances beyond the control of the agency or OAH that prevented an administrative law judge from conducting a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(e) Circumstances that require the department to issue a notice of amendment to an Implied Consent Combined Report (Form 735-0075) or Implied Consent Blood Test Failure Report (Form 735-0055) and the petitioning party is unable to file a timely request for hearing as set forth in ORS 813.410(3).

(6) “Necessary witness” means a witness whose testimony is essential to support a material fact or position of the petitioning party. The fact or position to be supported by the necessary witness must be within the scope of an implied consent hearing as set forth in ORS 813.410(6).

(7) “Offense” means the alleged Driving While Under the Influence of Intoxicants incident.

(8) “Petitioner” means the person whose driving privileges may be suspended.

(9) “Petitioning Party” means the petitioner or the petitioner’s attorney.

(10) “Received by DMV” means:

(a) Personally delivered to DMV Headquarters, 1905 Lana Ave. NE, Salem, OR;

(b) Delivered by mail to DMV Headquarters, 1905 Lana Ave. NE, Salem, OR 97314;

(c) Received by facsimile machine at telephone number (503) 945-5521; or

(d) Received by electronic mail via the implied consent hearing request form provided on DMV’s website – OregonDMV.com.

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440

Stats. Implemented: ORS 813.410 & 813.440

Hist.: MV 5-1984, f. 6-29-84, ef. 7-1-84; MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0100; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 7-1997, f. & cert. ef. 9-18-97; DMV 21-2002, f. & cert. ef. 11-18-02; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 14-2007, f. & cert. ef. 12-24-07; DMV 24-2010, f. 12-22-10, cert. ef. 1-1-11

## 735-090-0020

### Hearings Requests

(1) A hearing request must be in writing. The request should include:

(a) Petitioner’s full name;

(b) Petitioner’s complete mailing address;

(c) Date of arrest;

(d) Petitioner’s Oregon driver license number;

(e) Petitioner’s date of birth;

(f) Telephone number where petitioner can be called between 8 a.m. and 5 p.m.;

(g) Brief statement of the issues the petitioner proposes to raise at the hearing; and

(h) Dates and times the petitioner or attorney cannot participate in a hearing.

(2) A petitioner may request an in-person hearing either as part of the hearing request or after the initial hearing request, but the request for in-person hearing must be made within the time requirements specified in section (4), (5) or (6) of this rule or be part of a request for an untimely hearing, as appropriate.

(3) A request for an interpreter for a non-English speaking petitioner must be part of the hearing request.

(4) To be considered timely, a hearing request submitted pursuant to ORS 813.132 or 813.410(3), for failure of a breath test or refusal of a breath, blood or urine test, must be received by DMV by the tenth day following the arrest of the petitioner. Oregon Rules of Civil Procedure 10A (ORCP 10A) will be used to determine the computation of time.

(5) To be considered timely, a hearing request submitted pursuant to ORS 813.410(3), for failure of a blood test, must be received by DMV by the tenth day from the date DMV sends notice of suspension. ORCP 10A will be used to determine the computation of time.

(6) DMV will issue a final order denying an untimely hearing request unless the petitioning party demonstrates that the request should be granted under ORS 813.440.

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

Stat. Auth: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440

Stats. Implemented: ORS 813.410 & 813.440

Hist.: MV 5-1984, f. 6-29-84, ef. 7-1-84; MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0110; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 3-1996, f. & cert. ef. 7-26-96; DMV 21-2002, f. & cert. ef. 11-18-02; DMV 23-2004, f. & cert. ef. 11-17-04; DMV 14-2007, f. & cert. ef. 12-24-07; DMV 24-2010, f. 12-22-10, cert. ef. 1-1-11

## 735-090-0042

### Police Officer Request for an In-Person Hearing

A police officer may request that any hearing required under ORS 813.410 be an in-person hearing. The request may be made by:

(1) Marking the box provided on the Implied Consent Combined Report, Form 735-0075, or Implied Consent Blood Test Failure Report, Form 735-0055; or

(2) Submitting a separate written request to DMV Hearings Case Management Unit. The request may be:

(a) Personally delivered to DMV Headquarters, 1905 Lana Ave. NE, Salem, OR;

(b) Delivered by mail to DMV Headquarters, 1905 Lana Ave. NE, Salem, OR 97314; or

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(c) Received by facsimile machine at telephone number (503) 945-5521.

(3) To be considered timely, an officer's in-person hearing request submitted pursuant to ORS 813.132 or 813.410(3), for failure of a breath test or refusal of a breath, blood or urine test, must be received by DMV by the tenth day following the arrest of the petitioner. Oregon Rules of Civil Procedure 10A (ORCP 10A) will be used to determine the computation of time.

(4) To be considered timely, a hearing request submitted pursuant to ORS 813.410(3), for failure of a blood test, must be received by DMV by the 45th day following the arrest of the petitioner. ORCP 10A will be used to determine the computation of time.

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440  
Stats. Implemented: ORS 813.410 & 813.440  
Hist.: DMV 24-2010, f. 12-22-10, cert. ef. 1-1-11

## 735-090-0101

### Hearing Location

(1) Except as provided in section (2) of this rule, an in-person hearing will be held either in the county where the alleged offense occurred or at any place within 100 air miles of the place where the offense is alleged to have occurred. There is no location restriction when a hearing is conducted by telephone or other two-way electronic communication device.

(2) If there is a mutual agreement between the petitioning party and DMV, an in-person hearing may be held at a location outside of either the county where the alleged offense occurred or 100 air miles of the place where the offense is alleged to have occurred.

Stat. Auth.: ORS 183.341, 184.616, 184.619, 802.010, 813.410 & 813.440  
Stats. Implemented: ORS 813.410 & 813.440  
Hist.: DMV 23-2004, f. & cert. ef. 11-17-04; DMV 2-2007, f. & cert. ef. 1-24-07; DMV 24-2010, f. 12-22-10, cert. ef. 1-1-11

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**Rule Caption:** Increases Fee Amounts Vehicle Dealers may Charge Customers to Process Title and Registration Documents.

**Adm. Order No.:** DMV 25-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 735-150-0055

**Subject:** ORS 822.043 authorizes DMV to adopt rules to limit the (service) fee amounts that a licensed vehicle dealer may charge to prepare title and registration documents on behalf of a buyer or lessee (vehicle consumer). Pursuant to the statute, the (minimum) limit on service fees may not be less than:

(a) \$75 if the dealer prepares title and registration documents and uses an integrator; or

(b) \$50 if the dealer prepares hardcopy title and registration documents and does not use an integrator. An integrator is a third party independent contractor that facilitates the electronic submission of title and registration paperwork between a dealer and DMV.

Previously under OAR 735-150-0055, the (maximum) service fees could not exceed \$75, if the dealer prepares title and registration information using an integrator, or exceed \$50 if the dealer prepares title and registration documents in hardcopy form and does not use an integrator. So the maximum fee amounts limited by OAR 735-150-0055 were the same as the minimum fee amounts established under ORS 822.043. Those fee amounts had not changed since 2005. Since that time, inflation has increased the costs to dealers to prepare title and registration documents.

The amendment of OAR 735-150-0055 increases each service fee amount by \$25. The amendment increases the maximum service fee amounts from \$75 to \$100 if the dealer prepares title and registration documents and uses an integrator and from \$50 to \$75 if the dealer prepares hardcopy title and registration documents and does not use an integrator. The fee increase was reviewed in advance by the Oregon Dealer Advisory Committee.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-150-0055

### Dealer Title and Registration Document Preparation Service Fee; Inspection

(1) In accordance with ORS 822.043 and this rule, a vehicle dealer who elects to prepare DMV documents necessary to issue or transfer vehi-

cle title and registration on behalf of a buyer or lessee, may charge the buyer or lessee a service fee not to exceed:

(a) \$100, if the vehicle dealer uses an integrator; or

(b) \$75, if the vehicle dealer does not use an integrator.

(2) DMV may inspect dealer records for compliance with the fee limitations described in section (1) of this rule. DMV may refer information related to non-compliance with the requirements of ORS 822.043 and this rule to the Department of Justice, or any other enforcement agency.

(3) Dealers must implement procedures to ensure that the fees described by this rule do not exceed the amounts set forth in section (1) of this rule. Fee amounts that exceed the authorized amount must be promptly refunded to the buyer or lessee.

Stat. Auth.: ORS 184.616, 814.619, 802.010, 822.009, 822.035 & 822.045

Stats. Implemented: ORS 822.009, 822.030, 822.035 & 822.045

Hist.: DMV 22-2001(Temp), f. & cert. ef. 10-17-01 thru 4-14-02; DMV 26-2001 f. 12-14-01, cert. ef. 1-1-02; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 25-2010, f. 12-22-10, cert. ef. 1-1-11

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## Department of Transportation,

### Rail Division

#### Chapter 741

**Rule Caption:** Blockage of Public Grade Crossings.

**Adm. Order No.:** RD 2-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 12-22-10

**Notice Publication Date:** 11-1-2010

**Rules Repealed:** 741-125-0010

**Subject:** This rule is repealed because it is no longer needed. The Court of Appeals concluded in Burlington Northern and Santa Fe Railway v. Oregon Department of Transportation, 227 Or App 468 (2009) that Congress has preempted the State of Oregon's authority to regulate the length of time railroad equipment may block a railroad-highway grade crossing.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

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## Employment Department,

### Child Care Division

#### Chapter 414

**Rule Caption:** Training requirements for child care providers are more specific – Registered Family.

**Adm. Order No.:** CCD 7-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 414-205-0055, 414-205-0100, 414-205-0110, 414-205-0170

**Subject:** Added details for training requirements which are consistent with Oregon Registry certification.

Revises wording changes throughout to reference "certificate" instead of "certification" for child care sites.

**Rules Coordinator:** Courtney Brooks—(503) 947-1724

## 414-205-0055

### Training Requirements

(1) When a person submits a new application for registration as a family child care provider, the Child Care Division shall, prior to approving the registration, receive evidence from the person that the person has:

(a) Completed the Family Child Care Overview session;

(b) A current certification in first aid and infant and child cardiopulmonary resuscitation. Training must have practical hands-on instruction; therefore, online training is not acceptable.

(c) A current food handler certification pursuant to ORS 624.570; and

(d) Completed two hours of training on recognizing and reporting child abuse and neglect issues.

(A) Recognizing and reporting child abuse and neglect training must be based on Oregon law and practice so information is relevant to reporting in Oregon.

(B) Recognizing and reporting child abuse and neglect training must be two hours or more in duration to be accepted.

(2) When a registered family child care provider submits a renewal application, the Child Care Division shall, prior to approving it, receive evidence from the provider that the provider has:



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(a) A current certification in first aid and infant and child cardiopulmonary resuscitation. Training must have practical hands-on instruction; therefore, online training is not acceptable.

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Completed a minimum of eight hours of training during the two years preceding the renewal date. The training must be related to the core knowledge categories in the Oregon Registry. At least four clock hours of the eight hours of training must be in child development or early childhood. Duplicate training on recognizing and reporting child abuse and neglect issues can be accepted again after five years, and every five years thereafter towards the eight clock hours of training required for licensing.

(A) The Division will accept duplicate training one additional time if it is a Set 2 (intermediate) or Set 3 (advanced) training or above as described by the Oregon Center for Career Development in Childhood Care and Education; and it is not taken within the same license period.

(B) The following core knowledge categories are accepted for the child development and early childhood education requirement: Diversity (D), Family and Community Systems (FCS), Human Growth and Development (HGD), Health Safety and Nutrition (HSN), Learning Environments and Curriculum (LEC), Observation and Assessment (OA), Special Needs (SN), and Understanding and Guiding Behavior (UGB).

(C) An approved planned reading program of professional materials may count for up to two hours of the eight clock hours of training and must include a written assessment of the reading materials completed.

(3) When a person submits a reopen application, the Child Care Division shall, prior to approving it, receive evidence from the individual that the individual has:

(a) A current certification in first aid and infant and child cardiopulmonary resuscitation. Training must have practical hands-on instruction; therefore, online training is not acceptable.

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Documentation that individual has eight hours of training related to the Oregon Registry core knowledge categories during the previous two year license period. If the individual was previously licensed for less than two years, the training requirements will be prorated as follows: two hours of training for each six months of the previous license period. Duplicate training on recognizing and reporting child abuse and neglect issues can be accepted again after five years, and every five years thereafter towards the eight clock hours of training required for licensing.

(A) The Division will accept duplicate training one additional time if it is a Set 2 (intermediate) or Set 3 (advanced) training or above as described by the Oregon Center for Career Development in Childhood Care and Education; and it is not taken within the same license period.

(B) An approved planned reading program of professional materials may count for up to two hours of the eight clock hours of training and must include a written assessment of the reading materials completed.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 3-2004, f. 7-30-04 cert. ef. 8-1-04; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-205-0100

### Health

(1) The home must be a healthy environment for children.

(a) No person shall smoke or use smokeless tobacco in the family child care home during the hours the child care business is conducted. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

(b) No one shall consume alcohol or use non-prescription controlled substances in the presence of children. No one under the influence of alcohol or non-prescription controlled substances shall be in the home when child care children are present.

(c) There must be at least one flush toilet and one hand-washing sink available to children. Steps or blocks must be available to ensure children can use the toilet and sink without assistance.

(d) The room temperature must be at least 68°F during the hours the child care business is conducted.

(e) Rooms occupied by children must have a combination of natural and artificial lighting.

(f) Floors must be free of splinters, large unsealed cracks, sliding rugs and other hazards.

(2) The provider must have a basic first aid kit available for use. The kit must be kept out of the reach of children.

(3) Infants must be put to sleep on their backs.

(4) Except for mild cold symptoms that do not impair a child's function, children who are ill shall not be in care.

(5) If a child becomes ill in child care, the provider must separate the child from other children, to the extent possible, and contact the child's parent(s) to remove the child from care as soon as possible.

(6) Parents must be notified if their child is exposed to a communicable disease.

(7) Prescription and non-prescription medication may be given to a child only if the provider has written authorization from the parent, as required in OAR 414-205-0130(3).

(8) Prescription and non-prescription medications must be properly labeled and stored.

(a) Non-prescription medications or topical substances must be labeled with the child's name.

(b) Prescription medications must be in the original container and labeled with the child's name, the name of the drug, dosage, directions for administering, and the physician's name.

(c) Medication requiring refrigeration must be kept in a separate, covered container, marked "medication," in the refrigerator.

(9) Parents must be informed daily of any medications given to their child or any injuries their child has had.

(10) The provider must provide or ensure the availability of meals and snacks appropriate for the ages and needs of the children served.

(a) Meals and snacks must be based on the guidelines of the USDA Child Care Food Program.

(b) Foods must be stored and maintained at the proper temperature.

(c) Foods must be prepared and served according to the minimum standards for food handler certification.

(d) Infants must either be held or be fed sitting up for bottle feeding. Propping bottles is prohibited.

(11) Any animal at the family child care home must be in good health and be a friendly companion for the children in care.

(a) Potentially aggressive animals must not be in the same physical space as the children.

(b) Dogs and cats must be vaccinated according to a licensed veterinarian's recommendations.

(12) Animal litter boxes shall not be located in areas accessible to children.

(13) Caregivers must be physically present when children are interacting with animals.

(14) Reptiles (e.g. lizards, turtles, snakes, iguanas) frogs, monkeys, hooked beaked birds, baby chicks and ferrets are prohibited unless they are housed in and remain in a tank or other container which precludes any direct contact by children. Educational programs that include prohibited animals and are run by zoos, museums and other professional animal handlers are permitted.

(15) Parents must be made aware of the presence of any animals in the child care home.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 1-2008(Temp), f. & cert. ef. 8-6-08 thru 2-2-09; CCD 3-2008, f. & cert. ef. 10-2-08; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-205-0110

### Safety

(1) Children shall be protected from fire and safety hazards. Providers must have the following protections in place:

(a) If any preschool age or younger children are in care, hard-to-remove protective caps on all exposed electrical outlets in rooms used by children.

(b) If any preschool age or younger children are in care, barriers to protect children from fireplaces, space heaters, wood stoves, stairways and other hazards. Gates and enclosures should have the Juvenile Products Manufacturers Assn. (JPMA) certification seal to ensure safety.

(c) A working smoke detector on each floor and in any area where children nap;

(d) A working fire extinguisher with a rating of at least 2-A:10-BC;

(e) Firearms and ammunition kept under lock. Ammunition stored separately from firearms. Firearms must remain unloaded;

(f) Cleaning supplies, paints, matches, cigarette lighters, and plastic bags kept under child-proof lock;

(g) Other potentially dangerous items, such as medicine, drugs, and poisonous and toxic materials kept under child-proof lock;

(h) If any preschool age or younger children are in care, poisonous plants must be kept out of the reach of children; and

(i) All clear glass panels in doors clearly marked at child level.

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(2) All floor levels used by children must have access to two usable exits, as defined in OAR 414-205-0010(27), to the outdoors.

(a) If a basement is used for child care purposes, the requirement for two usable exits may be met by one of the following:

(A) A sliding glass door to the outdoors and a window which meets the definition of a usable exit;

(B) A swinging door to the outdoors and a window which meets the definition of a usable exit; or

(C) A window which meets the definition of a usable exit and an internal stairway to ground level which has unobstructed and direct access to the outdoors.

(b) If a window, which meets the definition of a usable exit, is used:

(A) Steps must be placed under the window to allow children to exit without assistance; and

(B) The window must be kept in good working condition.

(c) If a window used as an exit has a window well, a mechanism must be in place to allow children to exit the window well.

(3) The provider must have a written plan for evacuating children in an emergency. The plan must be posted in the home, familiar to the children and the caregivers, and practiced at least every other month.

(4) A telephone in working condition must be in the family child care home.

(a) Parents must be given the telephone number so they can contact the provider if needed.

(b) Emergency telephone numbers for fire, ambulance, police and poison control must be posted near the telephone.

(5) The building, grounds, water supply, and toys, equipment and furniture used by children must be maintained in a hazard-free condition.

(a) Broken toys, furniture and equipment must be removed from areas accessible to children.

(b) Both the exterior and interior of the home must be maintained in good repair.

(c) Painted surfaces must be in good condition, both inside and outside, to avoid exposing children to lead paint chips.

(6) If a caregiver is transporting children, the caregiver must have a valid driver's license and proof of appropriate insurance.

(7) The number of children transported shall not exceed the number of seat belts or child safety systems available in the vehicle.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-205-0170

### Grievance Review and Sanctions

(1) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants/providers for family child care registration.

(2) Registration may be denied, suspended, or revoked if a provider fails to meet requirements, provide CCD with information requested, allow an inspection, or correct deficiencies.

(3) Any action taken by CCD to deny, suspend, or revoke registration may be reported to USDA Child Care Food Programs, child care resource and referral agencies, Children, Adults and Families, Office of Self-Sufficiency and Office of Safety and Permanency for Children.

(4) A registration may be suspended immediately when CCD believes children may be at risk of harm in the family child care home. Such action may be taken before an investigation is completed.

(a) A provider whose registration has been suspended must immediately notify, verbally or in writing, all parents of the suspension.

(b) A provider whose registration has been suspended must post the suspension in the home where it can be viewed by parents.

(5) Registration will be denied, suspended or revoked if the provider or other resident of the home has been removed or suspended from the Central Background Registry.

(6) If an individual listed in 414-205-0040(2)(a) or (b) has been charged with, arrested for, or a warrant is out for any crime which CCD has determined indicates behavior that would have a detrimental effect on a child, the provider's application will be denied or registration will be suspended or revoked until the charge, arrest, or warrant has been resolved.

(7) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has been convicted of or sentenced for offenses that would disqualify the individual from the Central Background Registry.

(8) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has a founded child protective

services case or an open child protective services or law enforcement case that would disqualify the individual from the Central Background Registry.

(9) A provider whose registration has been revoked shall not be eligible to reapply for three years after the effective date of the revocation.

(10) A provider who violates these rules or the terms and conditions of registration under these rules may be subject to a civil penalty.

(a) For a serious violation, as defined in OAR 414-205-0010(25) a provider may be subject to a civil penalty of \$100 for the first violation after a written warning with time to correct is issued; and \$100 for each subsequent violation, not to exceed \$1,000 in a quarter for all rule violations.

(b) For other violations, a provider may be subject to a civil penalty of \$50 for the first violation after a written warning with time to correct is issued; \$100 for a second violation, and \$100 for each subsequent violation, not to exceed \$1,000 in a quarter for all rule violations.

(11) The provider has the right to appeal any decision to deny, suspend, or revoke registration or to impose a civil penalty, subject to the provisions of Chapter 183, Oregon Revised Statutes.

Stat. Auth.: ORS 657.610 & 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2005, f. & cert. ef. 4-29-05; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11

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**Rule Caption:** Training requirements for child care providers are more specific – Certified Child Care Centers.

**Adm. Order No.:** CCD 8-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 414-300-0005, 414-300-0010, 414-300-0015, 414-300-0030, 414-300-0040, 414-300-0120, 414-300-0250, 414-300-0415

**Subject:** Added details for training requirements which are consistent with Oregon Registry certification.

Revises wording changes throughout to reference “certificate” instead of “certification” for child care sites.

Updates food safety section to match Public Health Division rules regarding food storage temperatures.

**Rules Coordinator:** Courtney Brooks—(503) 947-1724

## 414-300-0005

### Definitions

The following words and terms, when used in OAR 414-300-0000 through 414-300-0415, have the following meanings:

(1) “Activity Area” means the area of the center that is available, during all the hours of operation, for the children’s activities. This area excludes kitchens, hallways, toilet rooms, multi-purpose areas used by all children, lockers, office, storage areas, isolation quarters, staff room, furnace room, and that part of rooms occupied by heating stoves, or stationary equipment not used by children. Additional exclusions may apply for specific age groups.

(2) “Attendance” means children actually present in the center at any given time.

(3) “Capacity” means the total number of children allowed in the center at any one time, based on the available indoor and outdoor square footage, the number of toilets in the center and the number of qualified staff.

(4) “Caregiver” means any person in the child care center who works directly with the children, providing care, supervision, and guidance.

(5) “Central Background Registry” means CCD’s Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(6) “Certificate” means the document that is issued by CCD to a child care center pursuant to ORS 657A.280.

(7) “Child Care” means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child’s parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care; or

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(e) By providers of medical services.

(8) "Child Care Area" means that indoor and outdoor area specifically certified for use by the center and includes all activity areas and other areas of the facility used to provide child care, such as kitchen, toilet rooms, offices, storage areas, and rooms used solely for napping or eating. This may be a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location.

(9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, for whom the child care center has supervisory responsibility in the temporary absence of the parent.

(10) "Child Care Center" or "Center" means a child care facility that is certified to care for thirteen or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(11) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(12) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(13) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation and includes the physical setting, administration, staff, equipment, program, and care of children.

(14) "Civil Penalty" means a fine imposed by CCD on a facility for violation of these rules.

(15) "Comparable group care program" means a program which has the following elements:

- (a) Staff are supervised by knowledgeable professionals;
- (b) Training of staff is provided or required annually;
- (c) Group size is similar to a certified child care facility;
- (d) Curriculum is age appropriate; and
- (e) The program is not providing uncertified drop-in care.

(16) "Contracted services" means activities (e.g., tumbling, music) provided by an organization or program other than the center, where non-center staff come into the center or the children are transported to another location.

(17) "Director" means a person who is designated by the operator as director or administrator of the center and who meets the qualifications of director pursuant to OAR 414-300-0080.

(18) "Drop-in Care" means care provided on an unscheduled, irregular basis, any time of the day or night, exclusively for drop-in children in a child care center.

(19) "Enrollment" means all children registered to attend the center.

(20) "Group" means a specific number of children assigned to specific staff.

(21) "Guidance and discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(22) "Head Teacher" means the person(s) who is responsible for the development and implementation of the program of activities for each infant and toddler, preschool age, and school-age program in the center.

(23) "Infant" means a child who is at least six weeks of age but is not yet walking alone.

(24) "Infant and Toddler Age Program" means care and education provided in a center, or part of a center, to children between the ages of six weeks and thirty-six months.

(25) "Night Care" means care given to children who sleep at the child care center for all or part of the night.

(26) "Nonserious Violation" means CCD has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-300-0005(42)

(27) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(28) "Operator" means the person, group, corporation, partnership, governing body, association, or other public or private organization legally responsible for the overall operation of the center and who has the authority to perform the duties necessary to meet certification requirements. If the

operator is other than the owner, an individual must be appointed as the operator by the owner.

(29) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(30) "Outbreak of a communicable disease" means two cases from separate households associated with a suspected common source.

(31) "Owner" means the person, group, corporation, partnership, governing body, association, or other public or private organization which holds the child care center as property and has a major financial stake in the operation of the center. The owner may or may not be active in the operation of the center; the owner may also be the operator.

(32) "Parent" means parent(s), custodian(s), or guardian(s), exercising physical care and legal custody of the child.

(33) "Parent cooperative" means a child care program in which:

- (a) Care is provided by parents on a rotating basis;
- (b) Membership in the cooperative includes parents;
- (c) There are written policies and procedures; and
- (d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

(34) "Preschool-Age Child" means a child who is 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year. For purposes of these rules, children attending kindergarten may be considered school-age children.

(35) "Preschool-Age Program" means care and education provided in a center, or part of a center, to children 36 months of age to attending kindergarten.

(36) "Program" means all activities and care provided for the children during their hours of attendance at the center.

(37) "Qualifying Teaching Experience" means:

(a) For infant/toddler and preschool age groups, 1,500 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period;

(b) For school-age groups, 600 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(38) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(39) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year, up to age 13. For purposes of these rules, children attending kindergarten may be considered school-age children.

(40) "School-Age Program" means care and education provided in a center, part of a center, school or other facility to children attending kindergarten or eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, eligible to be enrolled in the first grade or above in the next school year.

(41) "Serious complaint" means a complaint filed against:

- (a) A certified child care center by a person who has alleged that:
  - (A) Children are in imminent danger;
  - (B) There are more children in care than allowed by certified capacity;

(C) Corporal punishment is being used;

(D) Children are not being supervised;

(E) Multiple or serious fire, health or safety hazards are present in the center;

(F) Extreme unsanitary conditions are present in the center; or

(G) Adults are in the center who are not enrolled in the Central

Background Registry; or

(b) A facility providing child care, as defined ORS 657A.250(3), which is not a certified child care center by a person who has alleged that there are more children in care than allowed by law.

(42) "Serious Violation" means the division has made a valid finding when assessing a complaint that alleges:

(a) Children are in imminent danger;

(b) There are more children in care than allowed by law;

(c) Corporal punishment is being used;



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- (d) Children are not being supervised;
- (e) Multiple or serious fire, health or safety hazards are present in the home;
- (f) Extreme unsanitary conditions are present in the center;
- (g) Adults are in the center who are not enrolled in the Central Background Registry; or

(h) A facility is providing child care as defined in ORS 657A.250(4) which is not a certified child care center, by a person who has alleged that there are more children in care than allowed by law.

(43) "Site Director/Supervisor" means the person in charge of the facility at a site which is part of a larger multi-site program.

(44) "Site Coordinator" means the person responsible for coordinating over-all management and operation of a number of sites in a multi-site program.

(45) "Staff" means an individual who is the director, an employee, or a volunteer who is in the center for more than a single activity.

(46) "Substitute Director" means the person in charge of the center during the hours of operation when the director is not on site.

(47) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of program requirements and children's needs, and accountability for their care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(48) "Teacher" means a caregiver who plans and implements daily activities for a designated group of children and who meets the qualifications of teacher pursuant to OAR 414-300-0100.

(49) "Teacher Aide" means a caregiver who works under the direct supervision of a teacher and who meets the qualifications of Aide I or Aide II pursuant to OAR 414-300-0110.

(50) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is 24 months of age but under 36 months of age.

(51) "Usable Exit" means an unobstructed door or window through which caregivers and children can evacuate the center in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0605; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 9-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 8-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-300-0010

### Application for a Child Care Certificate

(1) Unless exempted by Oregon laws governing child care facilities, no person or organization shall operate a child care center without a valid certificate issued by the Child Care Division .

(2) Application for a certificate shall be made on forms provided by CCD.

(3) A completed application is required:

- (a) For the initial certificate;
- (b) For the annual renewal of the certificate; and
- (c) Whenever there is a change of owner, operator or location.

(4) The applicant shall complete and submit an application to CCD at least:

- (a) 45 days before the planned opening date of a new center; and
- (b) For renewal of certification, 30 days prior to the expiration of the certificate.

(A) If an application for renewal and payment of the required fee is received by CCD at least 30 days prior to the expiration date of the current certificate, the current certificate, unless officially revoked, remains in force until CCD has acted on the application for renewal and has given notice of the action taken.

(B) If an application for renewal and payment of the required fee is not received by CCD at least 30 days prior to the expiration date of the current certificate, the certificate will expire as of the date stated on the certificate and child care must cease at the facility, unless the renewal is completed before the expiration date.

(5) An application for a certificate shall be accompanied by a non-refundable filing fee.

(a) For the initial application, a change of owner/operator, the reopening of a center after a lapse in certification, or a change of location (except when a facility is forced to move due to circumstances beyond the control of the operator), the fee is \$100 plus \$2 for each certified space (e.g., the fee for a child care center certified to care for 30 children is \$60 + \$100 = \$160).

(b) For a renewal application, the fee is \$2 for each certified space.

(6) An application for a certificate must be completed by the applicant and approved by CCD within 12 months of submission or the application will be denied. If an application is denied, an applicant must submit a new application for a certificate.

(7) All civil penalties must be paid in full.

(8) A floor plan shall be submitted with the initial application and/or when a facility is being constructed or remodeled. The floor plan shall show dimensions of all rooms to be used (length and width), the planned use of each room, the placement and number of toilets, handwashing sinks, and diaper changing tables, and the location of the fixtures and plumbing in the kitchen. Similar plans shall be submitted to the environmental health specialist, the fire marshal and the buildings department prior to initial construction or remodel.

(9) If the facility is located within or attached to a building used for purposes other than child care, the floor plan shall describe the other activities which are carried out in adjoining rooms or buildings.

(10) If the applicant is a firm, association, corporation, public agency, or governmental entity, the application shall be signed by the chief executive officer or a person designated in writing to have the authority to sign for the applicant. If the applicant is a partnership, the application shall be signed by each partner.

(11) A management list shall be submitted with the application and updated annually. The list must specify who is responsible for each of the following:

- (a) Financial management;
- (b) Maintaining records;
- (c) Budgeting;
- (d) Policy Development;
- (e) Staff management, orientation and training;
- (f) Maintenance of building and grounds;
- (g) Meal planning and preparation;
- (h) Transportation of children, if provided; and
- (i) Ensuring the appropriateness of program activities according to age and development of the children.

(12) An operator shall provide verification to CCD that the center meets all applicable building codes and zoning requirements that apply to child care facilities:

- (a) Before the initial certificate is issued; and
- (b) Whenever the facility is remodeled.

(13) The center shall be approved by an environmental health specialist registered under ORS chapter 700, or an authorized representative of the Health Division, and by a state or local fire marshal, before a certificate is issued by CCD.

(a) If structural, emergency or permit problems occur, CCD may request that the operator have the center inspected by the appropriate authority; and

(b) The operator is responsible for payment of any applicable fees for fire safety and sanitation inspections.

(14) Upon receipt of a completed application, a representative of CCD shall evaluate the center and all aspects of the proposed operation to determine if the center meets certification requirements (OAR 414-300-0000 through 414-300-0415).

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0610; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 8-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-300-0015

### Issuance of a Child Care Certificate

(1) A certificate shall be issued by CCD when it has been determined the center is in compliance with OAR 414-300-0000 through 414-300-0415. There are two types of certifications. These are:

(a) A regular certificate, which, except as provided in OAR 414-300-0010(4)(b)(A), is valid for no more than one year; and

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(b) A temporary certificate. A child care center may not operate under a temporary certification for more than 180 days in any 12-month period. A temporary certificate is issued when:

(A) The center is in compliance with most requirements;

(B) There are no deficiencies identified by CCD that are hazardous to children; and

(C) The operator demonstrates an effort to be in full compliance.

(2) A certificate is not transferable to any other location or to another organization or individual.

(3) Any changes in the conditions of certificate shall be requested in writing to CCD and approved by CCD before the condition(s) of the current certificate may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0615; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 8-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-300-0030

### General Requirements

(1) The operator shall display the following near the entrance, or in some other area of the center, where they may be viewed by parent(s) of children in care:

(a) The most current certificate issued by CCD;

(b) Name of the director and/or the substitute director;

(c) Notice of planned field trips away from the immediate neighborhood, showing the date and place of each excursion;

(d) The current week's menu for all meals and snacks, if meals are provided by the center. Any substitution shall be recorded on the menu;

(e) A notice that the items identified in section (2) of this rule are available for review on request;

(f) Information on how to report a complaint to CCD regarding certification requirements;

(g) Notice that custodial parents have access to the center during the hours of operation and without advance notice; and

(h) Notice of center closures (vacation days, holidays, etc.).

(2) The operator shall have available for review on request:

(a) A copy of OAR 414-300-0000 through 414-300-0415, Rules for the Certification of Child Care Centers; and

(b) The most recent CCD, sanitation, and fire safety inspection reports.

(3) The operator shall report to CCD:

(a) An accident at the center resulting in the death of a child, within 48 hours after the occurrence;

(b) Injuries to a child at the center which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence;

(c) Damage to the building which affects the operator's ability to comply with these requirements, within 48 hours after the occurrence; and

(d) Any change in director prior to the director being on site. Such prior notification must include the replacement person's qualifications for the position and documentation that the person is enrolled in the Central Background Registry. An e-mail or a phone call, followed by written documentation, or a FAX will serve as notification.

(4) Information provided to CCD on applications, in records or reports, or any other written or verbal communication, shall be current, complete, and accurate.

(5) Staff shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050), to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(6) The child care center shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(7) The following information shall be in writing and made available to staff, CCD, and to parent(s) at the time of enrollment:

(a) Name, business address, and business telephone number of the person(s) who have immediate responsibility for the daily operation of the center;

(b) Guidance and discipline policy;

(c) Arrival and departure procedures;

(d) Emergency plan, as specified in OAR 414-300-0170(3);

(e) Procedures for field trips; and

(f) Information on transportation, when provided by the center;

(8) Representatives of all agencies involved in certification and custodial parents shall have immediate access to all parts of the center during hours of operation. CCD staff shall have the right to enter and inspect the center, including access to all staff, records of children enrolled in the center, and all records and reports related to the center operation regarding compliance with these rules.

(9) The center shall comply with the Health Division's administrative rules relating to:

(a) Immunization of children (OAR 333-050-0010 through 333-050-0140);

(b) Reporting communicable diseases (OAR 333-019-0000);

(c) Child care restrictable diseases (OAR 333-019-0010); and

(d) Dishwashing (OAR 333-150-0000).

(10) A center shall have written health policies and procedures approved by the Health Division or the county health department which cover, but are not limited to, the following:

(a) Storage and handling of food;

(b) Diaper changing and disposal, if applicable. The diaper changing procedure must be posted in the diaper changing area;

(c) Bathing infants, if the center cares for infants;

(d) Care of bed linen;

(e) Hand washing procedures. The hand washing procedures must be posted at hand washing sinks; and

(f) Serving formula, storage and handling of bottles, and feeding infants, if the center cares for infants.

(11) Parental request or permission to waive any of the rules for the certification of child care centers does not give the center permission to do so.

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

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 5-1989, f. & cert. ef. 3-15-89; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0620; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 8-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-300-0040

### Enrollment

(1) Children shall be admitted only in accordance with the conditions of the certificate, including, but not limited to, capacity, hours of operation, age range, and special conditions.

(2) All children visiting the center on a regular basis will count in capacity. Children attending with a non-staff parent do not count as enrolled as long as the parent remains with and is responsible for non-enrolled children.

(3) As required by state and federal civil rights laws and the Americans with Disabilities Act (ADA), the center shall not discriminate against any child on the basis of race, religion, color, national origin, gender, marital status of parent, or because of a need for special care.

(a) Refusal by the operator to care for a child with a need for special care because of lack of related skills and degree of competence, or because of structural barriers in the center, shall not in itself establish a prima facie case of discrimination. The decision to enroll/not enroll a child shall be made on an individual basis after the child's child care needs have been assessed using information from parents and professionals who are knowledgeable about the specific disability. The operator shall record the assessment that was made for each child with special needs.

(b) If a child with special needs is enrolled who needs a specific plan for caring for that child, such a plan shall be developed in writing between center staff, parent(s), and if necessary, outside specialists. All staff who come in contact with that child shall be fully aware of the plan.

(4) The operator shall obtain the following information in writing from parent(s) of each child before admission. The information shall be kept current at all times.

(a) Name and birth date of child;

(b) Date child entered care;

(c) Name(s), home and business address(es) and telephone number(s) of the custodial parent(s);

(d) The school attended by a school-age child;

(e) Name and telephone number of child's medical provider(s) and dentist, if applicable;

(f) Name and telephone number of person to be called in an emergency if the parent cannot be located; and

(g) Name and telephone number of person(s) to whom the child may be released.

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(5) The operator shall obtain the following information in writing from parent(s) of each infant and toddler before admission:

- (a) Schedule of feeding;
- (b) Types of food introduced and timetable for new foods;
- (c) Toilet and diapering schedule;
- (d) Sleep schedule;
- (e) Child's way of communicating and being comforted; and
- (f) Developmental and health history of any problems that could affect the child's participation in child care.

(6) The operator shall obtain the following written authorizations from parent(s) of each child before admission:

(a) Permission for the center to obtain emergency medical treatment for the child. The emergency medical release shall be:

- (A) On a form accepted by the medical treatment facility used by the operator for emergency medical services; and
- (B) Immediately accessible to all staff.
- (b) Permission for the center to call an ambulance or take a child to an available physician or medical treatment facility; and
- (c) Approval when applicable for:
  - (A) Participation in field trips; and
  - (B) Participation in swimming or wading activities, both on and off the premises of the center.

(7) A center shall maintain separate information and authorization forms on each child in care.

(8) An opportunity shall be given for each child, with his/her parent(s), to have a pre-placement visit to the center and for the center staff to exchange information with the parent(s).

(9) No child under six weeks of age shall be enrolled in a center.

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

Stat. Auth. ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0622; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 8-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-300-0120 Staff Training

(1) All new staff shall receive an orientation within the first two weeks of employment. Orientation shall ensure that staff are familiar with the contents of the orientation, as described below, and shall include, but is not limited to:

(a) Individual responsibilities in the event:

- (A) The building must be evacuated (e.g., fire);
  - (B) An emergency requires staff and children to remain inside under unusual circumstances (e.g., power outage, environmental hazard); or
  - (C) A child or staff is injured or becomes ill;
  - (b) These requirements (OAR 414-300-0000 through 414-300-0415);
  - (c) The center policies, as required in OAR 414-300-0030; and
  - (d) Procedures for reporting suspected child abuse or neglect.
- (2) The operator shall have documentation for each staff person of the date and type of orientation received and the person providing the orientation.

(3) Within the first 90 days of employment, all staff who function as teachers and count in staff/child ratios, with the exception of substitute teachers, shall:

(a) Complete training on recognizing and reporting child abuse and neglect and have documentation of having completed such training; and

(A) Recognizing and reporting child abuse and neglect training must be based on Oregon law and practice so information is relevant to reporting in Oregon.

(B) Recognizing and reporting child abuse and neglect training must be two clock hours or more in duration to be accepted.

(b) Complete first aid and CPR training or have current certification in first aid and CPR on file. First aid and CPR training must be kept current during employment at the center. First aid training shall include the following components: bleeding; burns; poisoning; choking; injuries; shock; seizures; sprains and breaks; dental emergencies; and head injuries. Training must have practical hands-on instruction; therefore, online training is not acceptable.

(4) Key people in food preparation must have food handler certification, pursuant to ORS 624.570, within 30 days of employment or have current certification on file. Food handler's training must be kept current during employment at the center. Key people include cooks, kitchen staff who handle food, and classroom staff who serve meals from a communal source.

(5) The director, head teacher, and all teachers shall participate yearly in at least 15 clock hours of training or education related to child care, of which at least eight clock hours shall be in child development or early childhood education. If an individual has worked in the facility less than a year, the training requirements will be prorated as follows: At least 1.25 clock hours for each month worked in the current license period.

(a) The following core knowledge categories are accepted for the child development and early childhood education requirement: Diversity (D), Family and Community Systems (FCS), Human Growth and Development (HGD), Health Safety and Nutrition (HSN), Learning Environments and Curriculum (LEC), Observation and Assessment (OA), Special Needs (SN), and Understanding and Guiding Behavior (UGB).

(b) A head teacher whose qualifications for the position are based solely on work experience shall emphasize training in child development and early childhood education for the first two years of employment;

(c) Training may include correspondence courses, conferences, workshops, or audiovisual programs.

(d) An approved planned reading program of professional materials may count for up to six hours of the 15 clock hours of training and must include a written assessment of reading materials completed by each participating staff person.

(e) The Division will accept duplicate training one additional time if it is a Set 2 (intermediate) or Set 3 (advanced) training or above as described by the Oregon Center for Career Development in Childhood Care and Education; and it is not taken within the same license period.

(f) The center shall record each person's training showing the subject matter, the date completed, and the number of clock hours of training in each certification year.

(6) During the first year of employment, a staff person may count up to two hours of orientation and their most recent training in first aid and CPR, food handler's training, if applicable, and child abuse and neglect training as part of the 15 clock hours of training required in OAR 414-300-0120(5), but may not use these toward the eight hours required in child development or early childhood education.

(7) During subsequent years of employment, a staff person may count 5 hours of first aid and CPR training or food handler's training as part of the 15 clock hours of training. Duplicate training on recognizing and reporting child abuse and neglect can be accepted again after three years, and every three years thereafter towards the 15 clock hours of staff training required for licensing.

(8) Staff meetings shall not count as training.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0637; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 8-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-300-0250 Food Selection, Storage, and Preparation

(1) All food and drink provided by the center shall be selected, stored, prepared, and served in a sanitary manner.

(2) Selection:

(a) All food products served by the center shall be obtained from commercial suppliers, except that:

(A) Fresh fruits and vegetables and center-frozen fruits or vegetables may be served;

(B) Home-canned or processed food may be served to a child only when supplied by the child's parent(s); and

(C) The serving of unpasteurized juice is prohibited.

(b) Only Grade A pasteurized and fortified milk shall be served to children.

(A) Powdered milk shall be used only in cooking.

(B) The serving of unpasteurized milk is prohibited.

(3) Storage:

(a) A center shall have at least one refrigerator, in good operating condition, that is adequate to store all potentially hazardous foods. "Potentially hazardous food" means any food or beverage that contains milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice or beans, and all other previously cooked foods.

(A) A spirit stem (alcohol filled - usually red) thermometer in working condition shall be affixed to the door, or the front edge of the top shelf, of each refrigerator.

(B) Refrigerators equipped with a temperature gauge visible from the exterior are acceptable.

(b) All potentially hazardous food shall, except when being prepared, be kept at 41 degrees Fahrenheit (F) or below, or 140 degrees F or above.



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(A) Foods requiring refrigeration after preparation shall be rapidly cooled to a temperature of 41 degrees F or below.

(B) Refrigerated storage space at 41 degrees F or less shall be used to store lunches which contain potentially hazardous food that children bring from home.

(C) A metal stem-type probe thermometer shall be used to ensure food requiring hot storage is maintained at 140 degrees F or above.

(D) Foods that have been cooked, and then refrigerated, shall be reheated rapidly to at least 165 degrees F before being served or placed in a hot food storage unit.

(4) Preparation:

(a) Food shall be prepared with a minimum of manual contact.

(b) Raw fruits and vegetables shall be washed in a clean, sanitized sink before being cooked or served.

(c) Food shall be prepared on food-contact surfaces and with utensils that are clean and have been sanitized.

(d) Food-contact surfaces and utensils shall be cleaned and sanitized after each use and/or whenever there is a change in processing from raw to ready-to-eat foods.

(e) Only approved food additives and preservatives shall be used by the center.

(5) Service:

(a) Each child shall be provided with his/her own individual use utensils for eating and drinking. These may be:

(A) Single service paper and plastic which shall be used once only; or

(B) Multiple use utensils which shall be washed in the prescribed manner between each use (OAR 414-300-0260).

(b) To protect food from contamination:

(A) A suitable dispensing utensil, that is not used for any other purpose, shall be used to transfer a food item to each child's plate or bowl; and

(B) A bowl, platter, pitcher, or dispensing utensil used for serving food or drink shall not be refilled or reused without first being washed and sanitized.

(c) Milk and fluid milk products shall be dispensed from a commercially filled plastic container of not more than one-gallon capacity, individual half-pint containers, or from a refrigerated bulk container equipped with an approved dispensing device.

(A) Milk containers shall be opened immediately before pouring.

(B) Any unused portions left in the original container shall be returned immediately to refrigeration.

(C) Unused portions of milk left in a pitcher shall be discarded.

(d) All food, once removed from the kitchen for service, shall be discarded.

(e) Leftover prepared food which has not been served shall be labeled and dated, rapidly cooled, and used within 36 hours, or frozen immediately for later use.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0660; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 8-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-300-0415

### Civil Penalty

(1) A facility that violates these rules or the terms and conditions of certification under these rules may be subject to a civil penalty.

(2) For a serious violation, as defined in OAR 414-300-0005(42) a facility may be subject to a civil penalty of \$100 for the first violation after a written warning with time to correct is issued; and an additional \$100 for each subsequent violation up to \$500 per violation, not to exceed \$1,000 in a quarter for all rule violations.

(3) For other violations, a facility may be subject to a civil penalty of \$75 for the first violation after a written warning with time to correct is issued, \$150 for a second violation, \$250 for a third violation and an additional \$100 for each subsequent violation up to \$500 per violation, not to exceed \$1,000 in a quarter for all rule violations.

(4) The facility has the right to appeal any decision to impose a civil penalty, subject to the provisions of chapter 183, Oregon Revised Statutes.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 8-2010, f. 12-29-10, cert. ef. 1-1-11

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**Rule Caption:** Training requirements for child care providers are more specific – Certified Family Child Care Homes.

**Adm. Order No.:** CCD 9-2010

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**Rules Amended:** 414-350-0010, 414-350-0020, 414-350-0030, 414-350-0050, 414-350-0060, 414-350-0090, 414-350-0100, 414-350-0115, 414-350-0200, 414-350-0210, 414-350-0375, 414-350-0380

**Subject:** Added details for training requirements which are consistent with Oregon Registry certification.

Revises wording changes throughout to reference "certificate" instead of "certification" for child care sites.

**Rules Coordinator:** Courtney Brooks—(503) 947-1724

## 414-350-0010

### Definitions

The following words and terms, when used in OAR 414-350-0000 through 414-350-0405, have the following meanings:

(1) "Activity Area" means the area of the home that is available, during all the hours of operation, for the children's activities. This area excludes the food preparation area of the kitchen, bathrooms, storage areas, and those parts of rooms occupied by heating stoves, furniture and stationary equipment not used by children.

(2) "Attendance" means children actually present in the home at any given time.

(3) "Capacity" means the total number of children allowed in the certified family child care home at any one time, based on the available square footage, the ages of the children to be served and the total number of staff.

(4) "Caregiver" means any person, including the provider, who cares for the children in the certified family child care home and works directly with the children, providing care, supervision and guidance.

(5) "Central Background Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(6) "Certificate" means the document that is issued by CCD to a certified family child care home pursuant to ORS 657A.280.

(7) "Certified Family Child Care Home" or "Home" means: a child care facility located in a building constructed as a single family dwelling that has a certificate to care for a maximum of 16 children at any one time.

(8) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care;

(e) By providers of medical services; or

(f) By a person who is a member of the child's extended family, as determined by the division on a case-by-case basis.

(9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(10) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(11) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(12) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.

(13) "Civil Penalty" means a fine imposed by CCD on a provider for violation of these rules.

(14) "Enrollment" means all children registered to attend the certified family child care home.

# ADMINISTRATIVE RULES

(15) "Guidance and Discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(16) "Infant" means a child who is at least 6 weeks of age but is not yet walking alone.

(17) "Night Care" means care given to children who sleep at the home for all or part of the night.

(18) "Nonserious violation" means CCD has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-350-0010 (32).

(19) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(20) "Operator" means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider.

(21) "Oregon Registry" means Pathways for Professional Recognition in Childhood Care and Education is a voluntary, statewide program to document and recognize the professional achievements of people who work in the childhood care and education profession.

(22) "Owner" means the person who holds the certified family child care business as property and has a major financial stake in the operation of the home.

(23) "Parent" means parent(s), custodian(s), or guardian(s) exercising physical care and legal custody of the child.

(24) "Potentially hazardous food" means any food or beverage containing milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice, beans or pasta, and all other previously cooked foods, including left-overs.

(25) "Preschool Age Child" means a child 36 months of age up to the summer vacation months prior to being eligible to be enrolled in the first grade in public school.

(26) "Program" means all activities and care provided for the children during their hours of attendance at the certified family child care home.

(27) "Provider" means the person in the certified family child care home who is responsible for the children in care, is the children's primary caregiver, and in whose name the certificate is issued. In a certified family child care home, the provider is the operator.

(28) "Qualifying Teaching Experience" means 1,500 hours, gained in at least three-hour blocks, within a 36-month period, with a group of children in an on-going group setting. Such a setting includes a kindergarten, preschool, child care center, certified or registered family child care home, Head Start program, or equivalent. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(29) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(30) "School-Age Child" means a child eligible to be enrolled in the first grade or above in public school including the months of summer vacation prior to being eligible to be enrolled in the first grade, up to age 13.

(31) "Serious complaint" means a complaint filed against a certified child care home by a person who has alleged that:

- (a) Children are in imminent danger;
- (b) There are more children in care than allowed by certified capacity;

(c) Corporal punishment is being used;

(d) Children are not being supervised;

(e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the home; or

(g) Adults are in the home who are not enrolled in the Central Background Registry.

(32) "Serious Violation" means CCD has made a valid finding when assessing a complaint that alleges:

- (a) Children are in imminent danger;
- (b) There are more children in care than allowed by law;
- (c) Corporal punishment is being used;
- (d) Children are not being supervised;

(e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the home; or

(g) Adults are in the home who are not enrolled in the Child Care Division's Central Background Registry

(33) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the certified family child care home in the temporary absence of the provider.

(34) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children, knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(35) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is at least 24 months of age but under 36 months of age.

(36) "Useable Exit" means an unobstructed door or window through which caregivers and children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0705; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 5-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 10-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2004, f. 7-30-04 cert. ef. 8-1-04; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-350-0020

### Application for a Child Care Certificate

(1) No person, unless exempted by Oregon laws governing child care facilities, shall operate a certified family child care home without a valid certificate issued by CCD.

(2) Application for a certificate shall be made on forms provided by CCD.

(3) A completed application is required:

- (a) For the initial certificate;
- (b) For the annual renewal of a certificate; and
- (c) Whenever there is a change of provider or location.

(4) The applicant shall complete and submit an application to CCD at least:

- (a) 45 days before the planned opening date of the certified family child care home; and
- (b) For renewal of a certificate, 30 days prior to the expiration of the certificate.

(A) The expiration date of the current certificate, unless officially revoked, remains in force until CCD has acted on the application for renewal and has given notice of the action taken.

(B) If an application for renewal and payment of the required fee is not received by CCD at least 30 days prior to the expiration date of the current certificate, the certificate will expire as of the date stated on the certificate and child care must cease at the facility, unless the renewal is completed before the expiration date.

(C) An application for a certificate shall be accompanied by a non-refundable filing fee.

(D) For the initial application, a change of provider, the reopening of a facility after a lapse in the certificate, or a change of location, the fee is \$25 plus \$2 for each certified space (e.g., the fee for a certified family child care home certified to care for 12 children is \$24 + \$25 = \$49).

(E) For a renewal application, the fee is \$2 for each certified space.

(5) All civil penalties must be paid in full.

(6) An application for a certificate must be completed by the applicant and approved by CCD within 12 months of submission or the application will be denied. If an application is denied, an applicant will be required to submit a new application for a certificate.

(7) The applicant shall submit with the initial application or when the home is being remodeled a drawing showing the dimensions of all rooms to be used (length and width), the planned use of each room, the location of required exits, the placement of the kitchen and bathrooms, and the location of plumbing fixtures.

# ADMINISTRATIVE RULES

(8) The applicant shall provide verification to CCD that the home meets all applicable building codes and zoning requirements that apply to certified family child care homes:

- (a) Before the initial certificate is issued; and
- (b) Whenever the home is remodeled.

(9) The home shall be approved by an environmental health specialist registered under ORS Chapter 700 or an authorized representative of the Department of Human Services before a certificate is issued by CCD.

(10) The home may be inspected by the local fire jurisdiction when local ordinances require a fire life safety survey as part of a business license or when CCD determines there is a need to do so.

(11) If the provider applies to care for more than 12 children, the provider must complete a fire life safety self evaluation. CCD staff and the provider will review the self evaluation. If fire safety concerns are identified, CCD staff may consult with the fire marshal and after consultation, may request that the fire marshal complete a fire life safety inspection.

(12) Upon receipt of a completed application, a representative of CCD shall evaluate the home and all aspects of the proposed operation to determine if certification requirements (OAR 414-350-0000 through 414-350-0405) are met.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260, 657A.270, 657A.280 & 657A.310  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0710; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-350-0030

### Issuance of a Child Care Certificate

(1) A certificate shall be issued by CCD when it has been determined the home is in compliance with OAR 414-350-0000 through 414-350-0405. There are two types of certification. These are:

(a) A regular certificate which, except as provided in OAR 414-350-0020(4)(b)(A), is valid for no more than one year; and

(b) A temporary certificate. A certified family child care home may not operate under a temporary certificate for more than 180 days in any 12-month period. A temporary certificate is issued when:

- (A) The home is in compliance with most requirements;
- (B) There are no deficiencies identified by CCD that are hazardous to children; and

(C) The provider demonstrates an effort to be in full compliance.

(2) A certificate is not transferable to any other location or to another organization or individual.

(3) A certificate is granted in the name of the operator/provider. An operator/provider is limited to one certificate at one address.

(4) An owner can have multiple sites under the following conditions:

(a) If the owner is the provider/operator in one of the homes, the owner can have two certified family child care homes; or

(b) If the owner does not directly care for any children, the owner can have more than two certified family child care homes.

(c) If the owner is the provider/operator in a home certified for more than 12 children, the owner may be the provider for only that certified family child care home. The provider may be the owner of other facilities. See OAR 414-350-0100 (5).

(5) Any changes in the conditions of certificate shall be requested in writing to CCD and approved by CCD before the condition(s) of the current certificate may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260, 657A.280, 657A.300 & 657A.310  
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0715; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-350-0050

### General Requirements

(1) The following items shall be posted in the certified family child care home where they may be viewed by parents:

- (a) The child care certificate;
- (b) Notification of a communicable disease outbreak at the home;
- (c) The evacuation plan; and
- (d) A notice that the following items are available for parents to review:

(A) The guidance/discipline policy;

(B) The current week's menus, with substitutions recorded;

(C) The description of the general routine;

(D) Information on how to report a complaint to CCD regarding certification requirements; and

(E) The most recent CCD and sanitation inspection reports and, if applicable, fire life safety self evaluation (or fire marshal inspection report if completed).

(2) The provider shall ensure that a copy of these administrative rules is available in the certified family child care home to all parents and staff.

(3) Caregivers shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050) to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(4) The certified family child care home shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(5) Representatives of all agencies involved in certification shall have immediate access to all parts of the home whenever the provider is conducting the child care business:

(a) CCD staff shall have the right to enter and inspect the home, including access to all caregivers, records of children enrolled in the home, and all records and reports related to the child care operation regarding compliance with these rules; and

(b) Representatives of the Department of Human Services Child Welfare (DHS) and the State Fire Marshal have the right to enter and inspect the home when an inspection has been requested by CCD.

(6) Custodial parents of all children enrolled shall have access to the home during the hours their child(ren) are in care.

(7) The provider shall develop the following information in writing and shall make it available to CCD, to staff, and to parent(s) at the time of enrollment:

(a) Guidance and discipline policy;

(b) Information on transportation, when provided by the provider or other caregiver; and

(c) The plan for handling emergencies and/or evacuations, including, but not limited to, fire, acute illness of a child or staff, natural disasters, power outages, and situations which do not allow reentry to the home after evacuation.

(8) The provider shall comply with the Department of Human Services' administrative rules relating to:

(a) Immunization of children (OAR 333-019-0021 through 333-019-0090);

(b) Reporting communicable diseases (OAR 333-019-0215 through 333-019-0415); and

(c) Child care restrictable diseases (OAR 333-019-0010).

(9) The provider shall report to CCD:

(a) An accident at the home resulting in the death of a child, within 48 hours after the occurrence; and

(b) Injuries to a child at the certified family child care home which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence.

(10) Documentation of meals and snacks provided by the certified family child care home shall be made available to CCD upon request, if the home does not participate in the USDA Child and Adult Care Food Program. Documentation is limited to the three weeks prior to the request.

(11) The provider is responsible for compliance with these requirements (OAR 414-350-0000 through 414-350-0405).

(12) Parental request or permission to waive any of the rules for certified family child care homes does not give the provider permission to do so.

Stat. Auth.: ORS 657A.260  
Stats. Implemented: ORS 657A.260, 657A.280, 657A.290, 657A.300, 657A.390 & 657A.400  
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0720; CSD 9-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11



# ADMINISTRATIVE RULES

## 414-350-0060 Enrollment

(1) Children shall be admitted only in accordance with the conditions of the certificate, including, but not limited to, capacity, hours of operation, age range, and special conditions.

(2) As required by state and federal civil rights laws and the Americans with Disabilities Act (ADA), the certified family child care home shall not discriminate against any child on the basis of race, religion, color, national origin, gender, marital status of parent, or because of a need for special care.

(a) Refusal by the provider to care for a child with a need for special care because of lack of related skills and degree of competence or because of structural barriers in the certified family child care home, shall not in itself establish a prima facie case of discrimination. The decision to enroll/not enroll a child shall be made on an individual basis after the child's child care needs have been assessed using information from parents and professionals who are knowledgeable about the specific disability. The provider shall record the assessment that was made for each child with special needs.

(b) If a child with special needs is enrolled who needs a specific plan for caring for that child, such a plan shall be developed in writing between the provider, parent(s) and, if necessary, outside specialists. The provider shall be responsible for ensuring that all caregivers have knowledge of the plan and act in compliance with the plan.

(3) The provider shall obtain the following information in writing from parent(s) of each child before admission. The information shall be kept current at all times.

(a) Name and birth date of child;

(b) Name(s), home and business addresses and telephone numbers, and the working hours of custodial parent(s) or guardian(s);

(c) The school attended by a school-age child;

(d) Name and telephone number of child's medical provider(s) and dentist, if applicable.

(e) Name and telephone number of person to be called in an emergency if the parent cannot be located; and

(f) Name and telephone number of person(s) to whom the child may be released.

(4) The provider shall obtain the following written authorizations from parent(s) of each child before admission. The authorizations shall be kept current at all times.

(a) Permission for the provider to obtain emergency medical treatment for the child. The emergency medical release shall be on a form accepted by the medical treatment facility used by the provider for emergency medical services;

(b) Permission for the provider to call an ambulance or take a child to an available physician or medical treatment facility;

(c) If applicable, permission for the child to participate in field trips; and

(d) If applicable, permission for the child to participate in swimming or wading activities, both on and off the premises of the home.

(5) No child under six weeks of age shall be enrolled in the certified family child care home.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0722; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-350-0090 General Requirements

(1) As required by Oregon civil rights law, ORS Chapter 659, the provider shall not discriminate in employment on the basis of race, color, gender, marital status, religion, national origin, age, or because of a mental or physical handicap unrelated to specific job performance.

(2) All caregivers, including the provider, shall:

(a) Have competence, sound judgment, and self-control in working with children;

(b) Be mentally, physically, and emotionally capable of performing assigned duties related to child care; and

(c) Have the required training and/or experience for the positions they hold, as specified in OAR 414-350-0100 and 0110.

(3) If there is evidence that casts doubt on the physical or mental competence of a person to care for children or have access to children, CCD may require that the provider provide CCD with an evaluation or other information, as specified by CCD.

(4) No one shall have access to child care children who has demonstrated behavior that may have a detrimental effect on a child. Residents of the home are considered to have access to the child care children even if they are not generally at home during hours of operation. This does not apply to parents of children in care when they drop off and pick up their children.

(a) The owner, the provider, all caregivers and other residents of the home 18 years of age or older must be enrolled in CCD's Central Background Registry prior to the issuance of an initial or renewal certificate. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th birthday. Certification may be denied, suspended, or revoked if the provider or other resident of the home has been removed or suspended from the Central Background Registry.

(b) Prior to any new caregiver caring for children or prior to an individual residing in the home, visiting the home on a regular basis, or substituting for or assisting the provider, the caregiver/individual shall be enrolled in the Central Background Registry and the provider shall receive verification from CCD of the enrollment. This does not apply to parents of children in care unless they are residing in the home or assisting in the provision of child care.

(c) When a provider is notified by CCD that a caregiver or other individual has been removed from the Central Background Registry, the provider shall not permit the caregiver or other individual to be in the home during hours the child care business is conducted or to have access to child care children.

(d) If any person listed in section (4)(a) & (b) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which CCD has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification may be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in or reside in the home, or have access to children in the home.

(e) If a criminal record check shows that a warrant has been issued for any person checked, CCD will inform the originating law enforcement agency of the person's name, employment address and telephone number.

(f) Any visitor to the home or other adult who is not enrolled in the Central Background Registry shall not have unsupervised access to children.

(5) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Central Background Registry.

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Central Background Registry.

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the provider must have a written policy to this effect, the policy must be known to all caregivers and volunteers, and the volunteers do not have to be enrolled in the Central Background Registry.

(6) No person shall smoke or use smokeless tobacco in the certified family child care home during the hours the child care business is conducted. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

(7) No one shall consume alcohol or use non-prescription controlled substances in the certified family child care home during the hours the child care business is conducted. No one under the influence of alcohol or non-prescription controlled substances shall be in the home during the hours the child care business is conducted.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.050, 657A.060 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 10-1990, f. & cert. ef. 4-23-90; CSD 4-1991, f. & cert. ef. 3-7-91; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0730; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-350-0100 The Provider

(1) The provider shall be:

(a) At least 18 years of age if the facility is certified for 12 children; or at least 21 years of age if the facility is certified for more than 12 children; and

(b) Responsible for the operation of the certified family child care home, including those duties ordinarily considered to be administrative. These include, but are not limited to, financial management, maintaining records, maintenance of the building and grounds, meal planning and

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preparation, compliance with certification requirements, communication with CCD, and correcting deficiencies.

(2) The provider shall have:

(a) At least one year of qualifying teaching experience, as specified in OAR 414-350-0010(28), in the care of a group of children in an ongoing group setting such as a kindergarten, preschool, child care center, certified family child care home, registered family child care home, or Head Start program; or prior to applying to be certified for up to 16 children, completed one year of successful operation as a certified family child care facility for 12 children if the qualifying teaching experience is based on registered family child care; or

(b) Completion of 20 credits (semester system) or 30 credits (quarter system) of training in a college or university in early childhood education or child development; or

(c) Documentation of attaining at least step eight in the Oregon Registry.

(3) The provider shall provide evidence of the following training prior to being certified:

(a) A current certification in infant and child first aid and cardiopulmonary resuscitation. Training must have practical hands-on instruction; therefore, online training is not acceptable.

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Completion of two hours of training on child abuse and neglect issues.

(4) Prior to a facility providing care to more than two children under 24 months of age, the provider shall have at least 30 clock hours of training specific to infant and toddler care. The provider of facilities certified on October 15, 2002, who are providing care for more than two children under 24 months of age must have documentation of 30 hours of prior training in infant and toddler care or a plan, approved by CCD, that shows how the training will be attained.

(5) The provider/operator shall be on-site at least half of the hours of operation that are reflected on the certificate. If the facility is certified for more than 12 children, the provider shall be on site at least 2/3 of the hours of operation that are reflected on the certificate. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences.

(6) The provider shall have no other employment, either in or out of the home, during the hours the provider is directly caring for children.

(7) The provider, or a substitute caregiver, shall be present during all the hours the certified family child care business is conducted.

(8) A caregiver substituting for the provider shall:

(a) Be at least 18 years old;

(b) Have current certification in first aid and infant and child cardiopulmonary resuscitation (CPR). Training must have practical hands-on instruction; therefore, online training is not acceptable.

(c) Have current food handler certification pursuant to ORS 624.570, if the substitute will be preparing or serving food;

(d) Be familiar with the provider's policies and procedures and with these requirements (OAR 414-350-0000 through 414-350-0405);

(e) Be authorized and able to correct a deficiency that might be an immediate threat to children; and

(f) Have on file documentation of an orientation and training in these administrative rules and the functions and duties of a provider;

(g) Meet the qualifications in (a)–(f), have completed child abuse and neglect training, and have worked in the facility at least 60 hours when substituting for the provider in a facility certified to care for more than 12 children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0732; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-350-0115

### Training Requirements

(1) All staff shall receive an orientation within the first two weeks of employment.

(2) The provider and all caregivers who function as substitute providers and Assistant II staff, including volunteers, shall participate yearly in at least 15 clock hours of training related to child care, of which at least eight clock hours shall be in child development or early childhood education. Substitute providers and volunteers who provide care in the home for less than 20 hours in a calendar year are not required to partici-

pate in the 15 clock hours of training. If an individual has worked in the facility less than a year, the training requirements will be prorated as follows: At least 1.25 clock hours for each month worked in the current license period.

(a) The following core knowledge categories are accepted for the child development and early childhood education requirement: Diversity (D), Family and Community Systems (FCS), Human Growth and Development (HGD), Health Safety and Nutrition (HSN), Learning Environments and Curriculum (LEC), Observation and Assessment (OA), Special Needs (SN), and Understanding and Guiding Behavior (UGB).

(b) Training may include correspondence courses, conferences, workshops and audio-visual programs.

(c) An approved planned reading program of professional materials may count for up to six hours of the 15 clock hours of training and must include a written assessment of reading materials completed by each participating staff person.

(d) The Division will accept duplicate training one additional time if it is a Set 2 (intermediate) or Set 3 (advanced) training or above as described by the Oregon Center for Career Development in Childhood Care and Education; and it is not taken within the same license period.

(3) During the first year of certification and the first year of employment staff may count up to two hours of orientation and their most recent training in first aid and CPR, food handler's and recognizing and reporting child abuse and neglect training, as part of the 15 clock hours of training required in OAR 414-350-0115(2), but may not use these toward the eight hours required in child development or early childhood education.

(a) Recognizing and reporting child abuse and neglect training must be based on Oregon law and practice so information is relevant to reporting in Oregon.

(b) Recognizing and reporting child abuse and neglect training must be two clock hours or more in duration to be accepted.

(4) During subsequent years of certification and subsequent years of employment staff may count five hours of first aid and CPR training or food handler's training as part of the 15 clock hours of training. Duplicate training on recognizing and reporting child abuse and neglect training can be accepted again after three years, and every three years thereafter towards the 15 clock hours of staff training required for licensing.

(5) The provider shall document each caregiver's training, showing the subject matter, the date completed, and the number of clock hours of training in each certification year.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-350-0200

### Food Selection, Storage, and Preparation

(1) All food and drink served by the provider shall be selected, stored, prepared, and served in a sanitary manner.

(2) All staff who prepare or serve food must have and maintain a current food handler certification pursuant to ORS 624.570.

(3) All food products served by the provider shall be obtained from commercial food suppliers, except that:

(a) Fresh fruits and vegetables may be served;

(b) Frozen fruits, frozen vegetables, and canned and frozen jams and jellies processed in the certified family child care home may be served; and

(c) Home-canned or home-processed food, other than those described in OAR 414-350-0200(3)(b), may be served to an individual child only when supplied by that child's parent(s).

(4) Only pasteurized and fortified milk shall be served to children.

(a) Powdered milk may be used only in cooking; and

(b) The serving of unpasteurized milk is prohibited.

(5) Only pasteurized 100% fruit or vegetable juice shall be served.

(6) A certified family child care home shall have at least one refrigerator, in good operating condition, that is adequate to store all potentially hazardous foods.

(7) All potentially hazardous food shall, except when being prepared, be kept at 41° Fahrenheit or below, or 140° F or above.

(a) A temperature-measuring device (TMD) in working condition shall be affixed to the door or the front edge of the top shelf of all refrigerators.

(b) Foods requiring refrigeration after preparation shall be covered and rapidly cooled to a temperature of 41° F or below.

(c) Extra care shall be taken to ensure that, after pouring milk, any unused portion left in the container is returned to the refrigerator immediately.

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(d) Refrigerated storage space at 41° F or less shall be used to store lunches that contain potentially hazardous food that children bring from home.

(e) Leftover food prepared but not served by the provider shall be covered, dated, labeled, and either refrigerated promptly and used within 36 hours or frozen immediately for later use.

(f) Foods that have been cooked and then refrigerated shall be reheated rapidly according to food handler certification standards.

(8) Children shall not be in the kitchen or food preparation areas when foods are being prepared unless they are protected from such hazards as hot foods, sharp utensils, etc.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0760; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-350-0210

### Meals and Snacks

(1) The provider shall provide or ensure the availability of adequate and nutritious meals and snacks appropriate for the ages and needs of the children served. USDA guidelines will be used to determine if meals and snacks are adequate and nutritious. Foods of minimal nutritional value (e.g., Jell-O, popcorn, desserts, potato chips) shall only be served occasionally and not replace nutritious foods.

(a) Every meal shall meet USDA guidelines and shall include at least one serving from each of the following food groups: fluid milk; breads and grains; meat, fish, poultry or meat alternatives (e.g., dried beans, peanut butter, yogurt or cheese). Each meal shall include two servings of fruits or vegetables. No liquids other than milk and 100% fruit juice shall be counted as part of the daily nutrition.

(b) Snacks shall meet USDA guidelines and shall consist of food or beverage from at least two of the following food groups: fluid milk, breads and grains; meat, fish, poultry or meat alternatives (e.g., dried beans, peanut butter, yogurt or cheese); vegetables and fruits. No liquids other than milk and 100% fruit juice shall be counted as part of the daily nutrition. A snack shall not consist of only two beverages.

(c) Nutrient concentrates and supplements (protein powders, liquid proteins, vitamins, minerals, and other nonfood substances) shall not be served to a child without a written statement of parental consent and written instructions from a medical practitioner. Special diets, not including vegetarian diets, shall not be served to a child without written instructions from a registered dietician or medical practitioner and written parental consent.

(2) Meals and snacks provided to children shall meet the following requirements:

(a) In certified family child care homes open morning through afternoon, lunch and morning and afternoon snacks shall be served to the children in care. If breakfast is served to all children, a midmorning snack is not required;

(b) School-age children arriving after school shall be served a snack;

(c) When the planned attendance is prior to 7 a.m. or after 6:30 p.m., a child shall be offered a complete meal if it is not provided by the parent(s); and

(d) There shall be no more than 3-1/2 hours between meals and snacks.

(3) Meals and snacks for children shall be:

(a) Prepared by the provider;

(b) Prepared by the parent of the child; or

(c) Prepared from a source approved by the Department of Human Services.

(4) When the parent of a child provides food for the child's meal:

(a) The provider shall be responsible for at least one serving of milk or a milk product to each child at meals;

(b) Each child's food shall be monitored daily by a caregiver to ensure that the food meets nutritional requirements as defined in section (1) of this rule; and

(c) The provider shall have sufficient food available to supplement any meal that does not meet nutritional requirements as defined in section (1) of this rule.

(5) Meals shall be served in a manner that supports safe and sanitary eating and allows socialization to occur.

(6) Nutrient concentrates and supplements shall not be served to a child without a written statement of consent from the parent and a medical practitioner. Special diets, not including vegetarian diets, shall not be

served to a child without a written statement of consent from the parent and a registered dietician or medical practitioner.

(7) To serve family style meals, where food is brought to the table in larger quantities and served to the plates from the table, a certified home must have a written plan, approved by the environmental health specialist and CCD, which includes at least the following elements:

(a) Provision for handwashing immediately prior to eating;

(b) Separate serving portions for each table, if more than one table is used;

(c) Serving utensils distinct from eating utensils;

(d) Provision for serving mildly ill children so as to prevent the spread of the illness;

(e) The discarding of any food brought to the table and not eaten; and

(f) Food brought to the table must be covered until a caregiver is seated with the children.

(8) A certified family child care home serving children under 12 months of age shall comply with the following requirements for those children:

(a) Each child shall be fed on his/her own feeding schedule.

(b) When formula is furnished by the provider, it shall be either the commercially prepared, iron-enriched, ready-to-feed type or shall be prepared from powder or concentrate and diluted according to manufacturers' instructions. When formula is prepared on site, the provider must have a written plan for mixing formula and sanitizing bottles and nipples. The plan must be approved in writing by the environmental health specialist.

(c) Formula, breast milk, and food provided by the parent shall be clearly marked with the child's name and refrigerated if required.

(d) No liquids, other than milk, formula, water, and 100 percent fruit juice, shall be served.

(e) Whole milk, skim milk, 1%, and 2% milk shall not be served unless requested in writing by the child's parent(s) and with a medical provider's written permission.

(f) Solid foods fed to infants shall be selected from the USDA Infant Food Chart.

(A) Solid foods shall not be fed to infants less than four months of age without parental consent.

(B) Solid food shall not be served directly from the container unless the child consumes the entire contents of the container or any remaining food in the container is discarded.

(C) If a portion of solid food from a container is placed in a clean, sanitized dish and served from the dish, any food remaining in the dish shall be discarded.

(D) Open containers of food, from which a portion has been removed, must immediately be refrigerated at 41 degrees F or less.

(E) Solid foods, with the exception of finger foods, shall be fed with a spoon.

(g) Honey or foods containing honey shall not be served; and

(h) Children who cannot feed themselves shall be held or, if able to sit alone, fed in an upright position.

(A) Infants up to six months of age shall be held while bottle fed.

(B) Bottles shall never be propped. The child or a caregiver shall hold the bottle.

(C) Infants no longer being held for feeding shall be fed in a manner that provides safety and comfort.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0762; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-350-0375

### Night Care

When a certified family home provides night care to child care children, the provider shall meet all of the requirements for certified family child care homes contained in OAR 414-350-0000 through 414-350-0405, except for 414-350-0150 and 414-350-0220. In addition, the home shall comply with the following requirements, and the certification shall reflect that regulated night care is offered.

(1) Staffing:

(a) During the hours of night care, the required staff/child ratios, as specified in OAR 414-350-0120 shall be maintained.

(b) A caregiver must be present on the same floor level as the child care children who are sleeping.



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(c) A caregiver must be awake for the arrival and departure of each child in night care. A caregiver must be awake during night care hours if more than six(6) children are in care.

(d) All persons 18 years of age and older, inclusive of guests sleeping in the home during night care hours, shall comply with OAR 414-350-0090(4)(a)-(f).

(2) Activities:

(a) There shall be quiet activities, such as story-time, games, arts and crafts, and reading, for each child arriving before bedtime. These activities shall be appropriate to the child's age, interests and abilities.

(b) The use of television, videos, and computer or electronic games shall comply with OAR 414-305-0220(4).

(c) The provider shall have a written plan for night care which includes:

(A) Regular routines;

(B) Supervision of children;

(C) Evacuation procedures for awake and sleeping children;

(D) Sleeping arrangements; and

(E) Arrival and departure procedures.

(d) If 24-hour care is provided, the provider shall have a written plan for self care, i.e., how her/his own needs will be met.

(3) Sleeping Arrangements:

(a) Space shall be available so that children may go to sleep at various times, based on their age and need for rest.

(b) All sleeping rooms used by children shall have two useable exits. A sliding door or window can be considered a useable exit if it meets the definition, as specified in OAR 414-350-0010(36).

(c) Beds and bedding shall comply with OAR 414-350-0230(3) and 414-350-0235(1).

(4) Personal Hygiene:

(a) When bathing is provided, there shall be:

(A) Individual washcloths and towels for each child;

(B) Individual bathing opportunities for each child, unless a parent(s) has given permission for siblings to bath together;

(C) Safety glass in glass shower doors or glass tub enclosures;

(D) Appropriate cleaning and sanitizing procedures implemented after each child has used the shower or tub; and

(E) Appropriate equipment in bathtubs and showers to prevent slipping.

(b) Children spending the night shall have the opportunity to brush their teeth with an individual toothbrush and toothpaste labeled with his/her name.

(c) When bathing, showering or brushing teeth, children shall be supervised by a caregiver. For school-age children, privacy shall be maintained.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-350-0380

### Swimming Activities

The following requirements apply to swimming/water activities provided on the premises of a certified family child care home, or off premises by another organization, public or private, when part of the facility's program.

(1) Definitions:

(a) "Beginning swimmer" means a child who has mastered the skills required to:

(A) Hold his breath with his head submerged;

(B) Perform a front and back float;

(C) Perform the flutter kick on his front and back;

(D) Be able to level off from a vertical entry into a float position; and

(E) Do a combined stroke (front or back) for at least 20 feet without stopping.

(b) "Non-swimmer" means a child who does not meet the definition of beginning swimmer.

(c) "Lifeguard" means a person holding current certification and meeting the requirements of OAR 333-060-0015(13).

(d) "Swimming pool" means a swimming or wading pool licensed by the Oregon Department of Human Services or one of its delegated agents under the requirements of OAR 333-060-0005 through 333-060-0225.

(e) "Wading" means water activities in which the water's depth is no higher than the child's knee.

(2) General Health and Safety:

(a) Children with diarrhea or who have had diarrhea within the last two weeks shall not use the pool.

(b) Children who are not toilet trained shall wear swim diapers.

(c) Children shall use the toilet and shower before entering the pool.

(d) Proper supervision shall be maintained, as specified in OAR 414-350-0380(3)(e), (f) and (g) and 414-350-0380(d) and (e).

(e) The pool operator shall maintain water quality as required in OAR 333-060-0200 or pool use shall cease until the water quality is restored.

(f) Children using the pool shall participate in basic water safety instruction based on their ages and developmental levels.

(A) All adults counted in the staff/child ratios in Table 4 shall be able to swim if the water is more than 48 inches deep and, regardless of the water depth, shall be dressed for swimming.

(B) For children 6 weeks to 36 months, one of the required staff must be in the water. Other staff may be on deck.

(g) Recreational swimming is not allowed for non-swimmers ages 6 weeks to 36 months in swimming pools with water depth 24 inches and over.

(h) Portable-style wading pools are not permitted.

(3) On-Premises Pool Facilities:

(a) On-premises pool facilities shall be licensed by the Oregon Department of Human Services or its delegated agent and shall comply with the requirements in OAR 333-060-0005 through 333-060-0225.

(b) On-premises pool facilities shall have toilets and showers for use by the swimmers.

(c) All new pools or pools at certified family child care homes certified after September 15, 2002, shall have dressing areas for each sex, with storage for the children's clothes.

(d) All activities occurring in a pool shall be under the direction and direct supervision of lifeguards.

(e) Center staff/child ratios shall be maintained at all times children are in the pool area, as specified in Table 4 of this rule.

(f) Lifeguard/child ratios shall be maintained at all times children are in the pool area:

(A) For children not yet attending kindergarten, there shall be one lifeguard for every 20 children;

(B) For children attending kindergarten and older, there shall be one lifeguard for every 40 children; and

(C) For mixed age groups of children, the age of the youngest child shall determine the lifeguard/child ratio.

(g) During all periods of pool operation, the appropriate number of lifeguards shall be on duty in the pool area. During periods of recreational swimming, at least one of the required number of lifeguards shall be stationed on the pool deck.

(h) Water activities that involve a sprayer or spray feature using potable water that is not re-circulated or collected may be conducted by the home. [Table not included. See ED. NOTE.]

(i) A written plan for pool emergencies shall be available to all staff. The plan shall cover procedures for medical emergencies, chemical emergencies and severe weather.

(A) Staff shall be familiar with emergency procedures, the use of safety equipment and emergency contacts.

(B) The certified home shall provide in-service training and/or drills of the emergency procedures for the pool at least every six months. The provider shall keep a written record of the type, date, time and duration of the training/drills.

(C) Emergency telephone numbers shall be posted near the telephone in the pool area and near a centrally-located and accessible telephone in the certified home.

(j) Safety equipment shall be provided and comply with OAR 333-060-0005 through 333-060-0225. In addition:

(A) All pools shall have an emergency telephone located in the pool area. The telephone shall be able to dial directly for emergency assistance, unless otherwise approved by the Oregon Department of Human Services.

(B) A bodily-fluid spill clean-up kit shall be provided in the pool area. The kit shall consist, at a minimum, of protective gloves, disinfectant, clean-up materials (e.g., bucket, sponge, paper towels), and a biohazard waste bag, be stored in a complete condition, and be replaced or restocked immediately after use.

(C) A rescue tube, of the type required by the lifeguard certifying agency, shall be provided for each lifeguard on duty.

(4) Off-Premises Pool Facilities:

(a) Off-premises pool facilities used by the center shall be licensed by the Oregon Department of Human Services as public swimming pools.

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(b) The off-premises pool management shall be made aware of the certified family child care home rules regarding swimming activities.

(c) Certified family child care home staff and children shall comply with the rules and regulations of the public swimming pool.

(d) Certified family child care home staff shall comply with the staff/child ratios in Table 4 of this rule. Lifeguard/child ratios shall be determined by the public swimming pool.

(e) Children shall be within sight and sound of certified family child care home staff at all times.

(f) First aid supplies and a copy of each child's medical release form shall be taken to off-premises pool facilities.

(5) Natural Bathing Areas:

(a) The certified family child care home shall not conduct swimming activities in areas with flowing water.

(b) Wading is the only water activity permitted in shallow surf, lakes, rivers and streams.

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

Stat. Auth.: ORS 657A.260

Stats. Implemented:

Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

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**Rule Caption:** Update cardio-pulmonary resuscitation (CPR) training requirements.

**Adm. Order No.:** CCD 10-2010(Temp)

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**Rules Amended:** 414-300-0110, 414-350-0110

**Subject:** Updates training requirements for teacher aides and assistants to be consistent with those for principle child care providers.

Amends training requirements for cardio-pulmonary resuscitation (CPR).

**Rules Coordinator:** Courtney Brooks—(503) 947-1724

## 414-300-0110

### Teacher Aides

(1) Aide I shall be:

(a) At least 15 years of age; and

(b) Directly supervised, i.e., within sight and sound of, a staff person who meets at least the qualifications of a teacher.

(2) Aide II in infant/toddler/preschool-age programs shall:

(a) Be at least 18 years of age;

(b) Have worked at least six months at the center where they are now employed; and

(c) Have current certification in first aid and CPR. Training must have practical hands-on instruction; therefore, online training is not acceptable.

(3) Aide II in school-age programs shall:

(a) Be at least 18 years of age;

(b) Have worked at least four months in the school-age program where they are now employed; and

(c) Have current certification in first aid and CPR. Training must have practical hands-on instruction; therefore, online training is not acceptable.

(4) Staff at Aide II level may, with the approval of the director, be out of sight and sound of a teacher for brief, necessary events, such as taking a child to the bathroom or bringing a child in for minor medical attention.

(5) An Aide II may not be left alone with a group of children, except as described in OAR 414-300-0130(2)(a) and 414-300-0350(5)(b).

(6) Staff at Aide II level shall be trained in the policies and procedures appropriate to tasks assigned prior to even brief periods of unsupervised access to children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0635; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 10-2010(Temp), f. 12-29-10, cert. ef. 1-1-11 thru 6-29-11

## 414-350-0110

### Assistants

(1) Assistants may be included in the caregiver/child ratio calculation.

(2) An Assistant I shall:

(a) Be at least 15 years of age;

(b) Work under the direct supervision, i.e., within sight and sound of the provider or substitute provider; and

(c) Have on file documentation of an orientation and be familiar with the provider's policies and procedures and these requirements (OAR 414-350-0000 through 414-350-0405).

(3) An Assistant II shall:

(a) Be at least 18 years of age;

(b) Have on file documentation of an orientation and be familiar with the provider's policies and procedures and these requirements (OAR 414-350-0000 through 414-350-0405);

(c) Have worked at least 60 hours at the certified family child care home, in a minimum of 3-4 hour blocks of time;

(d) Have current certification in first aid and CPR. Training must have practical hands-on instruction; therefore, online training is not acceptable; and

(e) With the approval of the provider, may be out of sight and sound of the provider with a group of children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0734; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 10-2010(Temp), f. 12-29-10, cert. ef. 1-1-11 thru 6-29-11

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## Oregon Board of Dentistry Chapter 818

**Rule Caption:** Adopts Oregon Board of Dentistry Administrative Rules regarding Health Professionals' Services Program.

**Adm. Order No.:** OBD 1-2011

**Filed with Sec. of State:** 1-11-2011

**Certified to be Effective:** 2-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 818-013-0001, 818-013-0005, 818-013-0010, 818-013-0015, 818-013-0020, 818-013-0025, 818-013-0030, 818-013-0035

**Rules Repealed:** 818-013-0001(T), 818-013-0005(T), 818-013-0010(T), 818-013-0015(T), 818-013-0020(T), 818-013-0025(T), 818-013-0030(T), 818-013-0035(T)

**Subject:** The Board of Dentistry adopted OAR Division 13 Health Professionals' Services Program as a result of the passage of HB 2345 by the Oregon Legislature, which became effective July 1, 2010.

The Board of Dentistry repealed temporary rules OAR 818-013-0001(T), 818-013-0005(T), 818-013-0010(T), 818-013-0015(T), 818-013-0020(T), 818-013-0025(T), 818-013-0030(T), & 818-013-0035(T) because the permanent rules have been adopted.

**Rules Coordinator:** Sharon Ingram—(971) 673-3200

## 818-013-0001

### Definitions

For the purpose of this section, the following definitions apply:

(1) "Confidential" means that, to the highest degree possible, the identities of the licensees investigated for alleged addiction to, dependence upon, or abuse of alcohol, drugs, and mind altering substances, or mental health disorders, and who have a diagnosed substance abuse disorder or mental health disorder, will be kept confidential by the Board and not be a matter of public record.

(2) "Diagnosis" means the principal mental health or substance use diagnosis listed in the DSM. The diagnosis is determined through the evaluation and any examinations, tests, or consultations suggested by the evaluation, and is the medically appropriate reason for services.

(3) "Direct Observe" means that a collection taker is in the restroom with donor and observes the providing of the sample throughout the entire process.

(4) "Diversion Coordinator" means the individual(s) authorized by the Board and the Executive Director to know the identities of the licensees who are candidates for or who are enrolled in HPSP.

(5) "Division" means the Oregon Department of Human Services, Addictions and Mental Health Division.

(6) "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(7) "Evaluation" means the process a Board approved, independent evaluator uses to diagnose the licensee's symptoms and to recommend treatment options for the licensee.

# ADMINISTRATIVE RULES

(8) "Health Professionals' Services Program" (HPSP) means the consolidated, statewide health professionals program for licensees diagnosed with a substance use disorder, a mental health disorder, or both types of disorders, as established by ORS 676.190.

(9) "Independent evaluator" means a Board approved individual or entity qualified to evaluate, diagnose, and recommend treatment regimens for substance abuse disorders, mental health disorders, or co-occurring disorders.

(10) "Mental health disorder" means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom that is identified in the DSM. "Mental health disorder" includes gambling disorders.

(11) "Monitoring agreement" means an individualized agreement between a licensee and the HPSP vendor that meets the requirements for a diversion agreement set by ORS 676.190.

(12) "Monitoring Entity" means an independent third-party that monitors licensees' program enrollment statuses and monitoring agreement compliance.

(13) "Non-disciplinary" means the Board will not take disciplinary action or enter disciplinary orders against a licensee who agrees to enter into the HPSP and remains compliant with that program.

(14) "Non-identifying" means a system where the licensee is referred to by number rather than name and the licensee's identity remains confidential to the Board.

(15) "Program" means the process whereby allegations of addiction to, dependence upon, or abuse of alcohol, drugs, or mind altering substances or mental health disorders are investigated, evaluated, and reported to the Board for action.

(16) "Self-referred licensee" means a licensee who seeks to participate in the HPSP program without referral from the Board.

(17) "Substance Use Disorders" means disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder, etc., as defined in DSM criteria.

(18) "Substantial non-compliance" means that a licensee is in violation of the terms of his or her monitoring agreement in a way that gives rise to concerns about the licensee's ability or willingness to participate in the program. Substantial non-compliance and non-compliance include, but are not limited to, the factors listed in ORS 676.190(1)(f). Conduct that occurred before a licensee entered into a monitoring agreement does not violate the terms of that monitoring agreement.

(19) "Successful completion" means the licensee has complied with the licensee's monitoring agreement to the satisfaction of the Board.

(20) "Toxicology testing" means urine testing or alternative chemical monitoring including, but not limited to blood, saliva, or breath as conducted by a laboratory certified, accredited or licensed and approved for toxicology testing.

(21) "Treatment" means the planned, specific, individualized health and behavioral-health procedures, activities, services and supports that a treatment provider uses to remediate symptoms of a substance use disorder, mental health disorder or both types of disorders.

(22) "Vendor" means the entity that has contracted with the Division to conduct the program.

(23) "Voluntary" means that the Board cannot compel a licensee to enter the HPSP.

Stat. Auth.: ORS 676, 679 & 680  
Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140(e)  
Hist.: OBD 2-2010(Temp), f. & cert. ef. 8-6-10 thru 2-1-11; OBD 1-2011, f. 1-11-11, cert. ef. 2-1-11

## 818-013-0005

### Participation in Health Professionals' Services Program

(1) Effective July 1, 2010, the Board participates in the Health Professionals' Services Program (HPSP).

(a) The Board establishes procedures to process cases of licensees preparatory to transfer to HPSP.

(b) The procedures will be confidential, non-disciplinary, and voluntary.

(c) The Executive Director will have overall management responsibilities for the procedures. The Executive Director will designate Board staff

to serve as Diversion Coordinator(s) who will manage and conduct investigations and report to the Board.

(d) The Diversion Coordinator(s) will investigate information related to addiction to, dependence upon, or abuse of alcohol, drugs, or mind altering substances or mental health disorders, by licensees and provide licensees with resources for evaluations, if appropriate.

(2) Only licensees of the Board who meet the referral criteria may be referred by the Board to the HPSP.

(a) The Board may refer a licensee to the HPSP in lieu of public discipline.

(b) In the event a licensee declines to submit to an evaluation or declines referral to HPSP, the Diversion Coordinator(s) will present the matter to the Board for decision and the Board's action may jeopardize the confidential nature of licensee's status as a candidate for, or enrollment in, HPSP.

(3) Licensees may self-refer to HPSP without Board approval as permitted by ORS 676.190(5).

Stat. Auth.: ORS 676, 679 & 680  
Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140(e)  
Hist.: OBD 2-2010(Temp), f. & cert. ef. 8-6-10 thru 2-1-11; OBD 1-2011, f. 1-11-11, cert. ef. 2-1-11

## 818-013-0010

### Procedures for Board Referrals

(1) When the Board receives information involving a licensee who may have a substance related disorder, mental disorder, or both types of disorders, the Board staff will investigate and complete a non-identifying confidential report to be presented at a Board meeting.

(2) The Board will consider all relevant factors before determining whether to refer a licensee to the HPSP, including but not limited to licensee's disciplinary history; the severity and duration of the licensee's impairment; the extent to which licensee's practice can be limited or managed to eliminate danger to the public; and the likelihood that licensee's impairment can be managed with treatment.

(3) If a licensee meets referral criteria and the Board approves entry into the HPSP, the Board will provide a written referral to HPSP.

Stat. Auth.: ORS 676, 679 & 680  
Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140(e)  
Hist.: OBD 2-2010(Temp), f. & cert. ef. 8-6-10 thru 2-1-11; OBD 1-2011, f. 1-11-11, cert. ef. 2-1-11

## 818-013-0015

### Referral of Licensees to the HPSP

(1) A Board referral to HPSP will include, at a minimum:

(a) Copies of documents from a Board approved independent evaluator which provide a diagnosis of a substance related disorder or a mental health disorder or both disorders, and provide treatment options;

(b) A written statement from the Board as to whether the licensee's impairment presents, or presented, a danger to the public;

(c) A written statement from the licensee agreeing to enter the HPSP in lieu of discipline and agreeing to abide by all of the terms and conditions established by the vendor;

(d) A written statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the Board within three (3) business days after the licensee is arrested or convicted; and

(e) A letter of instruction to the vendor detailing the additional agreement provisions required by the Board.

(2) For referral to HPSP, the licensee shall:

(a) Sign an Agreement to Enter the Health Professionals' Services Program.

(b) Provide written authorization allowing for the release of documents by the Board to the HPSP vendor, and permit the verbal exchange of information between the Board and the HPSP vendor.

(c) Within one (1) business day of the effective date of the Agreement to Enter the Health Professionals'

Stat. Auth.: ORS 676, 679 & 680  
Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140(e)  
Hist.: OBD 2-2010(Temp), f. & cert. ef. 8-6-10 thru 2-1-11; OBD 1-2011, f. 1-11-11, cert. ef. 2-1-11

## 818-013-0020

### Additional Required Provisions

(1) Prior to referral to HPSP, the licensee shall agree, by written statement, to waive any privilege with respect to any physical, psychiatric, psychological, or substance use treatment, in favor of the Board; and to execute waivers or releases with any and all health care providers to permit exchange of information between the health care providers and the Board.



# ADMINISTRATIVE RULES

(2) Monitoring agreement will be for a minimum of five (5) years, or as determined by the Board.

(3) Urinalysis testing shall be directly observed.

(4) Licensee shall assure that at all times the Board has the most current information regarding licensee's address and telephone numbers for both residences and employments.

(5) Licensee will be responsible for all costs for treatment including, but not limited to, evaluations, residential treatment, after care regimens, group therapy programs, counseling, and toxicology testing. Failure to meet those financial obligations may constitute substantial non-compliance.

(6) As warranted, the Board shall add any additional agreement provisions and will convey those to the vendor by letter of instruction.

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140(e)

Hist.: OBD 2-2010(Temp), f. & cert. ef. 8-6-10 thru 2-1-11; OBD 1-2011, f. 1-11-11, cert. ef. 2-1-11

## 818-013-0025

### Approval of Independent Evaluators

(1) To be approved by the Board as an independent evaluator, an evaluator must be:

(a) Licensed as required by the jurisdiction in which the evaluator works; and

(b) Able to provide a comprehensive assessment of and written report describing a licensee's diagnosis, degree of impairment, and treatment options.

(2) The Board will not accept an independent evaluator in a particular case if, in the Board's judgment, the evaluator's judgment is likely to be influenced by a personal or professional relationship with a licensee.

(3) The Board will maintain a list of approved independent evaluators on the Board's Web site at [www.oregon.gov/Dentistry](http://www.oregon.gov/Dentistry).

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140(e)

Hist.: OBD 2-2010(Temp), f. & cert. ef. 8-6-10 thru 2-1-11; OBD 1-2011, f. 1-11-11, cert. ef. 2-1-11

## 818-013-0030

### Approval of Treatment Providers

(1) To be approved by the Board as a treatment provider, a provider must be:

(a) Licensed as required by the jurisdiction in which the provider works; and

(b) Able to provide appropriate treatment considering licensee's diagnosis, degree of impairment, and treatment options proposed by the independent evaluator.

(2) The Board will not accept a provider as a treatment provider in a particular case if, in the Board's judgment, the treatment provider's judgment is likely to be influenced by a personal or professional relationship with a licensee.

(3) The Board will maintain a list of approved treatment providers on the Board's Web site at [www.oregon.gov/Dentistry](http://www.oregon.gov/Dentistry).

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140(e)

Hist.: OBD 2-2010(Temp), f. & cert. ef. 8-6-10 thru 2-1-11; OBD 1-2011, f. 1-11-11, cert. ef. 2-1-11

## 818-013-0035

### Non-Compliance Action

The Board, upon being notified of a licensee's substantial non-compliance, will investigate and determine the appropriate sanction which may include, but is not limited to, a limitation of licensee's practice and any other sanction, up to and including termination from HPSP and formal discipline. In the event the HPSP vendor or the monitoring entity reports a matter of non-compliance to the Diversion Coordinator(s), the matter, following an investigation, will be brought to the Board for decision and the Board's action may jeopardize the confidential nature of licensee's enrollment in HPSP.

Stat. Auth.: ORS 676, 679 & 680

Stats. Implemented: ORS 676.185, 676.190, 676.195, 676.200 & 676.140(e)

Hist.: OBD 2-2010(Temp), f. & cert. ef. 8-6-10 thru 2-1-11; OBD 1-2011, f. 1-11-11, cert. ef. 2-1-11

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## Oregon Business Development Department Chapter 123

**Rule Caption:** Oregon Investment Advantage Division 155 is being renumbered to 635.

**Adm. Order No.:** OBDD 1-2011

**Filed with Sec. of State:** 1-3-2011

**Certified to be Effective:** 1-3-11

**Notice Publication Date:** 11-1-2010

**Rules Repealed:** 123-635-0050

**Rules Ren. & Amend:** 123-155-0000 to 123-635-0000, 123-155-0100 to 123-635-0100, 123-155-0150 to 123-635-0150, 123-155-0175 to 123-635-0175, 123-155-0200 to 123-635-0200, 123-155-0250 to 123-635-0250, 123-155-0270 to 123-635-0270, 123-155-0300 to 123-635-0300, 123-155-0350 to 123-635-0350, 123-155-0400 to 123-635-0400

**Subject:** Oregon Investment Advantage rules, division 155 is being renumbered to 635.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-635-0000

### Purpose and Scope

These administrative rules specify procedures and criteria necessary to guide certification under the Oregon Investment Advantage Act for the exemption on qualified facilities from State of Oregon business income or corporate excise taxation, as allowed under ORS 316.778 or 317.391. These exemptions on taxable income/profits encourage businesses to invest in new Oregon operations with new full-time employees (earning minimum compensation levels) at qualifying facilities in counties exhibiting the lowest per capita income and unemployment rates statewide.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.495, 285C.500 - 285C.506, 316.778 & 317.391

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0000, OBDD 1-2011, f. & cert. ef. 1-3-11

## 123-635-0100

### Definitions

As used in this division of administrative rules, in addition to definitions in OAR 123-001 (Procedural Rules), unless the context dictates otherwise:

(1) "Business firm" means a person operating or conducting one or more trades or businesses for profit, and does not include any governmental agency, municipal corporation or nonprofit corporation, other than a people's utility district or cooperative joint operating agency under ORS 262.005.

(2) "Facility" has the meaning given under ORS 285C.500(4).

(3) "Municipal Corporation" means the following with respect to the location of a Facility proposed in an application for preliminary certification:

(a) The county government of the county, the territory of which contains the Facility, regardless of whether the location is incorporated or not;

(b) A city government, if the Facility will be located within the corporate limits or urban growth boundary of the city; and

(c) A Port for which the Facility will be located within the territorial limits of the port district.

(4) "Qualified Location" means a site for a Facility as described in OAR 123-635-0150.

(5) "Unique Operations" has the meaning described in OAR 123-635-0175.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.500 & 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0100, OBDD 1-2011, f. & cert. ef. 1-3-11

## 123-635-0150

### Qualified Locations

A proposed Facility must be inside a county as determined according to section (1) of this rule, and located at a site satisfying the requirements of section (2) of this rule, at the time when the Department receives the application for preliminary certification:

(1) With respect to county eligibility:

(a) Effective July 1 of each year, the Department shall determine the counties fulfilling the criteria under ORS 285C.500 based on county annual unemployment rates and per capita personal income levels for the three most recent years for which data are then available.

(b) This determination remains in effect for any proposed Facility, for which the Department receives application for preliminary certification on or after that July 1, until and including June 30 of the next year, except when the determination is modified to reflect official revisions in the data occurring during that annual period at least one full month before receipt.

# ADMINISTRATIVE RULES

(c) Subsequent revisions to data described in this section do not affect the county eligibility for a preliminary certification application received when the county was eligible.

(2) The specific site of a proposed Facility must meet at least one of the following two requirements:

(a) The site is completely inside the urban growth boundary (UGB) of a city with a population of 15,000 or less (based on the most recent population estimates available from the Portland State University Population Research Center); or

(b) Regardless of being inside or outside of any city's UGB, the site consists entirely of land zoned for industrial use:

(A) Pursuant to effective municipal zoning ordinances that expressly and generally permit permanent facilities and private operations for heavy or light manufacturing, energy production, fabrication, warehousing, distribution, mineral/agricultural processing or similarly intensive, economic uses;

(B) In accordance with applicable state land-use laws, including but not limited to those for unincorporated communities, exceptions from state planning goals, or ORS 197.713, 197.714 or 197.719; and

(C) Such that the Facility's business operations must directly benefit a traded sector industry under ORS 285B.280, regardless of other uses permitted under the particular zoning code ordinance.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.500 & 285C.503, ORS 197.713, 197.714 & 197.719

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0150, OBDD 1-2011, f. & cert. ef. 1-3-11

## 123-635-0175

### Unique Operations

Under ORS 285C.503(5)(e), a business firm's operations that comprise a Facility proposed for preliminary certification must be new business operations respective to the site of the Facility and to any other location in this state where the firm operates, such that:

(1) In the case of the business firm itself, the business operations at the Facility must be categorically different from any operations in which that same firm has recently engaged. (As an example, a business firm may receive certification for a Facility that will manufacture or distribute certain products here for the first time, even if the firm's products were already for sale in this state)

(2) In the case where the business firm has 100-percent common equity interest or is under common control (by way of corporate, familial or similar affiliations) with one or more other business firms operating in this state, the business operations at the Facility must be significantly dissimilar from any operations in which any other such firm has recently engaged. (As an example, a corporate subsidiary is certifiable for a new, first-in-Oregon facility fabricating a laminated wood product, even if another subsidiary of the same parent company already makes essentially the same product in this state, but the new operations utilize an advanced generation of technology with which the product has higher performance standards or weight-bearing specifications)

(3) Irrespective of section (1) or (2) of this rule, the acquisition of a preexisting Facility does not qualify as new business operations, unless both of the following are satisfied:

(a) The business firm invests appreciably in real property or extensively in terms of installing personal property at the Facility after applying for preliminary certification; and

(b) The operations that the firm will undertake pursuant to the new investment are significantly dissimilar from operations recently performed at the Facility.

(4) For purposes of this rule:

(a) "Categorically different" means that the existing, in-state business operations produce, render, deliver or provide essentially another type of good or service that is also for a distinct market segment or customer base.

(b) "Recently" means during the 12 months before the date, on which the Department received the application for preliminary certification to the Department.

(c) "Significantly dissimilar" means that the existing, in-state business operations, or the goods or services arising from them, utilize different technology, processes, delivery methods, points in supply chain, marketing, brand names or the like.

(5) How much a Facility's proposed operations are like those of any business existing anywhere in Oregon does not matter, except as provided under ORS 285C.503(4)(b)(A) and (5)(f), to the extent the operations will compete with local business(es), see OAR 123-635-0270(4)(b) and (5).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.500 & 285C.503

Hist.: EDD 9-2005, f. & cert. ef. 11-4-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; Renumbered from 123-155-0175, OBDD 1-2011, f. & cert. ef. 1-3-11

## 123-635-0200

### Preliminary Certification Application

For purposes of ultimately seeking the exemption under ORS 316.778 or 317.391:

(1) A business firm must complete an application for preliminary certification and send it to the Department, as follows:

(a) Using the form prescribed by the Department; and

(b) Before the following:

(A) Commencement of construction, installation or similar activities with respect to any new property or improvements comprising the proposed Facility; and

(B) Hiring of any, who will constitute the five or more required employees at that location.

(2) The preliminary certification application must include a fee of \$500 in the form of a check or money order payable to the Department.

(3) Applications shall be submitted to: Business Development, Business Oregon, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301-1280.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0200, OBDD 1-2011, f. & cert. ef. 1-3-11

## 123-635-0250

### Determination of Preliminary Certification

Pursuant to a filing as described in OAR 123-635-0200

(1) The Department shall:

(a) Review the application for preliminary certification for completeness; and

(b) Determine whether the business firm and the applicant's proposed Facility:

(A) Is at a Qualified Location;

(B) Represents Unique Operations; and

(C) May be reasonably expected to satisfy the employment and other applicable requirements under ORS 285C.503(5).

(2) Not more than 30 days after receipt of the application for preliminary certification, the Department shall do the following:

(a) Notify the applicant in writing whether the application is complete; and

(b) Send a copy of the application to the Municipal Corporations, in such a way that the date of sending is recorded.

(3)(a) The Department shall complete the determination described in subsection (1)(b) of this rule, after receiving any:

(A) Additional information requested from the applicant; and

(B) Timely responses from the Municipal Corporations.

(b) This determination shall not be final sooner than 60 days from the date, on which the Department sent the copy of the application to the Municipal Corporations, unless they all have provided sufficient response, for example, written confirmation of "no objection" from local officials based on communication with governing body members..

(4) Within 30 days after fulfillment of the steps in section (3) of this rule, the Department shall notify the applicant in writing of its decision, which shall include but is not limited to the following:

(a) In the event that the Department denies preliminary certification it shall send the applicant either notice consistent with OAR 123-001-0725 or only a written statement of explanation if the denial results from an objection as described in OAR 123-635-0270(2).

(b) In the event that the Department approves the preliminary certification it shall send a letter conferring preliminary certification.

(5) The Department shall send written notification of the final determination on preliminary certification to relevant staff of the Department of Revenue.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0250, OBDD 1-2011, f. & cert. ef. 1-3-11

## 123-635-0270

### Local Objection & Relevant Requirements

Respective the preliminary certification:

(1) A Municipal Corporation may through a formal submission to the Department; however:

# ADMINISTRATIVE RULES

(a) The Department must receive the objection and evidence within 60 days from the date the Department sent a copy of the application for preliminary certification to the governing body of a Municipal Corporation in OAR 123-635-0250(2)(b).

(b) If the Department does not receive the objection and any necessary evidence /copy of an adopted resolution, the Municipal Corporation is deemed to agree to preliminary certification.

(2) In order for the objection to be automatic and not subject to appeal in a contested case, the objection under section (1) of this rule must:

(a) Take the form of a resolution that is adopted by the governing body during the 60-day period, in accordance with applicable local laws, government charter and practices;

(b) Contain a statement of the reason(s) for objection under ORS 285C.503(4)(b) and information as described in section (5)(b) or (6) of this rule.

(3) If local officials believe that the proposed Facility does not satisfy a requirement under ORS 285C.503(5), the Municipal Corporation is encouraged and expected to timely furnish relevant information to the Department even if it does not adopt a resolution.

(4) In addition to information in the application, the Department shall rely primarily on the Municipal Corporations in determining whether:

(a) Health insurance coverage will be at least equal to that of Municipal Corporation employees, if applicable.

(b) Business operations will meaningfully compete with one or more existing local businesses operating in or employing persons from the city or county, including competition for:

(A) Local customers;

(B) Skilled workers or managers within the local labor pool;

(C) Other resources or input, for which local supplies and accessibility are critical but scarce or problematic; or

(D) Comparable circumstances, which always exclude general inter-firm rivalry within the larger marketplace.

(5) If local competition as described in subsection (4)(b) of this section is indicated, then it must also be:

(a) Supported with clear evidence furnished by the Municipal Corporation, pursuant to which the Department can independently make a determination under ORS 285C.503(5)(f); or

(b) Formally stated as an objection in the resolution adopted by the governing body of a Municipal Corporation that at a minimum identifies the type and basic nature of local competition that would arise.

(6) In order for the Department to deny an application for preliminary certification based on local growth or development standards, the Municipal Corporation's adopted resolution must include information showing that the relevant standards were contained in municipal ordinances effective when the business firm submitted the application to the Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.506

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0270, OBDD 1-2011, f. & cert. ef. 1-3-11

## 123-635-0300

### Annual Certification

For purposes of annual certification of a Facility for each tax year of the business firm, up to 10 times under ORS 285C.506:

(1) A preliminarily certified business firm that owns or leases and operates the Facility must file the application for annual certification with the Department:

(a) On or before the 30th day after the end of the income or corporate excise tax year, for which it is seeking to claim or exercise the exemption under ORS 316.778 or 317.391; and

(b) Using the form prescribed by and available from the Department.

(2) Each application must include a fee of \$100 in the form of a check or money order payable to the Department.

(3) Within 30 days after the date of filing, Department staff shall review the application, consider potential fact-finding about the Facility under ORS 285C.506(5) to (8), and determine whether it satisfies the applicable requirements for annual certification then:

(a) If the Department denies annual certification, it shall send notice consistent with OAR 123-001-0725.

(b) If the Department approves the annual certification, it shall send a letter conferring certification for the just concluded tax year.

(4) The Department shall also copy relevant staff at the Department of Revenue with items as described in section (3) of this rule.

(5) Requirements for annual compensation apply only to a Facility that received preliminary certification on or after January 1, 2011.

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

Stat. Auth.: ORS 285A.075 & 285C.506(4)

Stats. Implemented: ORS 285C.506

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0300, OBDD 1-2011, f. & cert. ef. 1-3-11

## 123-635-0350

### Issues of Initial & Subsequent Annual Certifications

For purposes of annual certification as described in OAR 123-635-0300:

(1) The preliminarily certified business firm may not file the first such application for annual certification with the Department until after the end of the tax year, in which:

(a) Business operations have commenced at the Facility;

(b) Relevant employees have been hired; and

(c) The business firm has fully:

(A) Acquired facility property; and

(B) Completed it in terms of the construction, reconstruction, modification and installation of proposed improvements for purposes of subsection (a) of this section.

(2) For purposes of this first filing, the application shall show that after the date, on which the Department approved the preliminary certification:

(a) Business operations commenced at the Facility within: (A) Six months, if only acquiring existing buildings or structures; or

(B) Eighteen months, if involving major construction or reconstruction; and

(b) Facility property did not remain in an unfinished state of construction, reconstruction, modification or installation for more than six months without significant progress toward completion of such activities.

(3) In order for the Department to certify the Facility with the first filing:

(a) The location and nature of the Facility's business operation need to conform to that indicated in the application for preliminary certification, for which the Department may issue an amended preliminary certification as appropriate, pursuant to formal receipt of revised information from the business before the end of the tax year. In determining the appropriateness of issuing an amended preliminary certification, the Department shall consider:

(A) Such criteria as described in section (5) of this rule; and

(B) Material implication for issues described under ORS 285C.503(4)(b), consulting with the Municipal Corporations beforehand as warranted.

(b) Subsection (2)(a) or (b) of this rule must be satisfied, except as allowed by Department staff through a written finding that the delay or interruption is reasonable and not excessive, given the nature and extent of the business firm's investment in the Facility or of inadvertent circumstances.

(4) For purposes of an application for annual certification:

(a) Its approval shall not depend on any current issue of actual competition with other local businesses, Qualified Location or Unique Operations.

(b) The Department may deny the application if discovering that when the application for preliminary certification was submitted, the Facility was not at a Qualified Location or did not represent Unique Operations, including but not limited to the case where the preliminary certification application contained false or incomplete information.

(c) The Department may approve the application, even if the nature of the Facility or the business firm/ownership changes after the first filing, including but not limited to changes in:

(A) The composition of Facility property or its exact location; or

(B) The corporate or ownership structure or organization of the business.

(5) To allow a change as described in section (4)(c) of this rule depends on:

(a) Direct, ongoing continuity with the original facility;

(b) Business operations remaining materially the same; and

(c) Relative to the location identified in the application for preliminary certification, the Facility is located at what was likewise a Qualified Location inside the same urban growth boundary or at a similarly proximate location.

(6) The business firm need not make its first such filing immediately following the tax year described in section (1) of this rule, and the business firm may miss or skip any of the ten opportunities to apply for annual certification; however:



# ADMINISTRATIVE RULES

(a) Neither postponement of the first filing nor failure to apply in any subsequent tax year shall affect the period for which certification is otherwise allowed.

(b) The business firm may not claim or exercise the exemption under ORS 316.778 or 317.391 for any such tax year, pursuant to which it did not directly make application for annual certification as described in OAR 123-635-0300. The firm may still use the exemption for any remaining, eligible tax year that is not more than nine consecutive tax years after the year described in section (1) of this rule, subject to the firm's application and annual certification.

(c) If an application for annual certification is timely filed but denied by the Department, then the exemption is disallowed for not only that year, but also for all other remaining, eligible tax years (but without retroactive effect on any prior exemption).

Stat. Auth.: ORS 285A.075 & 285C.506(6)  
Stats. Implemented: ORS 285C.506, 316.778 & 317.391  
Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0350, OBDD 1-2011, f. & cert. ef. 1-3-11

## 123-635-0400

### Application Fees, Waivers

With respect to application fees as described in this division of administrative rules:

(1) The Department may excuse the fee or reduce the required amount:

(a) If a business firm's Facility readily qualifies for certification, but as determined based on Department experience and expertise relative to general business activity in the county, region or statewide, it:

- (A) Is very small in size;
- (B) Has minimal employment; or

(C) Will likely have modest revenue prospects and little likelihood of effectively realizing much benefit from the exemption on taxable income; or

(b) If it can be demonstrated that such a waiver will further the goals and objectives of the program and other relevant public policies, for example, when partial or non-imposition of the fee might promote business investments in areas of the state where the exemption the has not yet been used.

(2) The Department shall return or refund the amount collected to the applicant, if it rejects the application or denies the preliminary or annual certification, pending a final order to that effect.

(3) The moneys collected would defray administrative costs; in particular, they may be critical for offsetting legal expenses in the event of contested case appeal.

Stat. Auth.: ORS 285A.075, 285C.503(3) & 285C.506(4)  
Stats. Implemented: ORS 285C.503 & 285C.506  
Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0400, OBDD 1-2011, f. & cert. ef. 1-3-11

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**Rule Caption:** These rules are being renumbered to become a part of Chapter 123.

**Adm. Order No.:** OBDD 2-2011

**Filed with Sec. of State:** 1-3-2011

**Certified to be Effective:** 1-3-11

**Notice Publication Date:** 12-1-2010

**Rules Adopted:** 123-450-0000

**Rules Ren. & Amend:** 190-010-0035 to 123-450-0010

**Subject:** This division of rules is being renumbered to be included in Chapter 123 for the Oregon Business Development Department. The rules relating to the Arts Commission themselves are being repealed. Procedures for grants have been revised and a definitions section has been added.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

## 123-450-0000

### Definitions

(1) "Commission" means the Oregon Arts Commission.

(2) "Executive Director" means the administrator of the Arts Program of the Oregon Business Development Department.

Stat. Auth.: ORS 359  
Stats. Implemented: ORS 359  
Hist.: OBDD 2-2011, f. & cert. ef. 1-3-11

## 123-450-0010

### Grants

(1) Receipt of Funds. The Commission may receive from state, federal, or local governments or from the community at large, funds for use by the Commission for its own programs or disbursements deemed worthy by the Commission within the restrictions provided by law.

(2) Purposes and Goals. With funds available to the Commission for such purposes, the Commission may from time to time, on application, approve and disburse grants to encourage and support artistic endeavor in all disciplines and to insure as feasible that the cultural resources of the state are made available to all. In the grant process, the Commission should consider the following goals:

(a) To support and promote excellence in the arts in Oregon;

(b) To make artistic activities of high quality available to all;

(c) To disseminate information about arts and cultural activities in the state, and about resources for the arts that are available, both regionally and nationally;

(d) To assist Oregon artists who contribute to its economic and cultural development;

(e) To encourage and aid the development of regional and local councils and organizations that promote cultural development and provide arts related services to the community.

(3) Eligibility. Grants to organizations shall be made only to those groups or organizations which are nonprofit and tax exempt pursuant to the then existing laws. Grants may be made to individual Oregon artists through certain programs, as determined by the Commission; Grants may be matched by a grantee recipient at the discretion of the Commission.

(4) Reporting. The applicant must submit financial information satisfactory to the Commission at the time of application and prior to action by the Commission. In the event a grant is made, the grantee must comply with the budget outlines submitted with the application and make records available from time to time for periodic audit by the Commission.

(5) Action on Grants. All applications submitted to the Commission must be acted upon by the Commission in public meetings; provided, however, the Commission may delegate to the Executive Director authority to authorize grants minimal in nature, subject to ratification by the Commission.

(6) Guidelines. With the approval of the Commission, guidelines shall be written and published that provides the public and applicants with information regarding the grants process and procedures. Appropriate forms and materials designed in accordance with such guidelines shall be made available.

Stat. Auth.: ORS 359  
Stats. Implemented:  
Hist.: AC 2, f. & ef. 6-2-77; Renumbered from 190-010-0035, OBDD 2-2011, f. & cert. ef. 1-3-11

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## Oregon Business Development Department, Oregon Arts Commission Chapter 190

**Rule Caption:** These rules are being renumbered to become a part of Chapter 123.

**Adm. Order No.:** OAC 1-2011

**Filed with Sec. of State:** 1-3-2011

**Certified to be Effective:** 1-3-11

**Notice Publication Date:** 12-1-2010

**Rules Repealed:** 190-010-0000, 190-010-0005, 190-010-0010, 190-010-0015, 190-010-0020, 190-010-0025, 190-010-0030, 190-010-0040

**Subject:** This division of rules is being renumbered to be included in Chapter 123 for the Oregon Business Development Department. The rules relating to the Arts Commission themselves are being repealed. Procedures for grants have been revised and a definitions section has been added.

**Rules Coordinator:** Mindee Sublette—(503) 986-0036

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## Oregon Department of Education Chapter 581

**Rule Caption:** Repeals charter school revolving loan program.

**Adm. Order No.:** ODE 17-2010

**Filed with Sec. of State:** 12-17-2010

**Certified to be Effective:** 12-17-10

**Notice Publication Date:** 11-1-2010

# ADMINISTRATIVE RULES

## **Rules Repealed:** 581-020-0350

**Subject:** • The rule authorized the Superintendent to make loans to charter schools. The loans were to be financed from the Public Charter School Development Fund created in statute. The Legislature did not appropriate moneys to this fund for the loan program.

- The loan program was part of the original charter school law adopted in 1999.

- An audit was conducted of funds of the Department of Education. One recommendation of this audit was the abolishment of the Public Charter School Development Fund because the fund had never been used. The abolishment was accomplished during the 2009 Legislative Session by repealing ORS 338.185 which created Public Charter School Development Fund.

- Repeal of the rule is consistent with the Legislative repeal of the statutory section

**Rules Coordinator:** Diane Roth—(503) 947-5791

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**Rule Caption:** Requires adoption of process to allow students to demonstrate essential skills in language of origin.

**Adm. Order No.:** ODE 18-2010

**Filed with Sec. of State:** 12-17-2010

**Certified to be Effective:** 12-17-10

**Notice Publication Date:** 7-1-2010

**Rules Adopted:** 581-022-0617

**Subject:** Rule directs schools districts and public charter schools to adopt process to allow certain English Language Learner students to demonstrate proficiency in essential skills in the students' language of origin.

**Rules Coordinator:** Diane Roth—(503) 947-5791

## **581-022-0617**

### **Essential Skill Assessments for English Language Learners**

(1) Definitions. As used in this rule:

(a) "Assessment option" means an assessment approved to assess proficiency in the Essential Skills for the purpose of earning a high school diploma or a modified diploma.

(b) "English Language Learner" (ELL) means a student who meets the definition of "Limited English Proficient" found in Title IX, Part A, Section 9101.25 of the No Child Left Behind Act of 2001 (NCLB).

(c) "Essential Skills" means process skills that cross academic disciplines and are embedded in the content standards. The skills are not content specific and can be applied in a variety of courses, subjects, and settings.

(d) "Qualified Rater" means any individual who is:

(i) Trained to a high degree of proficiency in scoring the assessment administered to the student; and

(ii) Endorsed by the school district or public charter school, consistent with local school board policy, as proficient in the student's language of origin for the purposes of accurately scoring the student's work in the student's language of origin.

(2) Consistent with OAR 581-022-0615, school districts and public charter schools must adopt a policy whether to allow ELL students to demonstrate proficiency in the Essential Skill of "Apply mathematics in a variety of settings" in the students' language of origin for those ELL students who by the end of their 11th grade year:

(a) Are on track to meet all other graduation requirements; and

(b) Are unable to demonstrate proficiency in the Essential Skills in English.

(3) Consistent with OAR 581-022-0615, school districts and public charter schools must adopt a policy whether to allow ELL students to demonstrate proficiency in Essential Skills other than "Apply mathematics in a variety of settings" in the students' language of origin for those ELL students who by the end of their 11th grade year:

(a) Meet the criteria in Section 2(a)-(b) of this rule;

(b) Have been enrolled in a U.S. school for five (5) years or less; and

(c) Have demonstrated sufficient English language skills using an English language proficiency assessment option that is approved by the State Board of Education. ODE will issue final notice of the State Board of Education's adoption of English language proficiency assessment options by March 1 of each year as an addendum to the Test Administration Manual.

(4) If a school district or public charter school adopts a policy allowing ELL students to demonstrate proficiency in the Essential skills in the

students' language of origin under Sections 2 and 3 of this rule, that policy must include the following:

(a) Development of a procedure to provide assessment options as described in the Test Administration Manual in the ELL students' language of origin for those ELL students who meet the criteria in Section 2(a)-(b) of this rule.

(b) Development of a procedure to ensure that locally scored assessment options administered in an ELL student's language of origin are scored by a qualified rater.

Stat. Auth.: ORS 329.451, 338.025, 339.115, and 339.505

Stats. Implemented: 329.045, 329.075, 329.485, and 338.115

Hist.: ODE 18-2010, F. & cert. ef. 12-17-10

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**Rule Caption:** Updates and clarifies rule relating to private career school licenses.

**Adm. Order No.:** ODE 19-2010

**Filed with Sec. of State:** 12-17-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 8-1-2010

**Rules Amended:** 581-045-0009

**Subject:** The rule amendment provides clarity regarding the components and level of detail required for those components for instructional programs in private career schools.

**Rules Coordinator:** Diane Roth—(503) 947-5791

## **581-045-0009**

### **Instructional Programs**

(1) All schools shall:

(a) Offer programs of quality, content and duration, that are based on specific industry standards or an occupational task analysis, and with appropriate entrance criteria, instructional materials, staff, equipment and facilities to prepare students for the programs' occupational objectives; and

(b) Operate programs evaluated by appropriate program advisory committees as defined in OAR 581-045-0013, unless a program is exempt from the advisory committee requirement under 581-045-0014. Materials for exempt programs will be reviewed by the Superintendent to determine the adequacy and appropriateness of the instructional methodology. The school shall prepare instructional design documentation for review, evaluation and analysis that includes:

(A) A program outcome summary for each program offered that clearly states the program title, duration, educational or professional technical objective(s) of the program, and the job(s) title and level for which the training prepares the student. In addition the program outcome summary must include the following information:

(i) A description of the target population for enrollment;

(ii) The entrance requirements and prerequisite knowledge or skills needed to enroll;

(iii) Any state license exams or other certifications the student will be prepared to take upon successful completion of the program;

(B) A list of the industry standards or the occupational task analysis used to formulate the instructional design, and the associated competencies for each standard or occupational task;

(C) A list of core abilities taught in the program and the associated competencies, if any;

(D) A list of competencies taught in the program, sequenced by learning plans;

(E) All learning plans, which shall include:

(i) Core abilities and competencies taught in the lesson;

(ii) Learning objectives for each competency;

(iii) Learning activities that achieve the learning objectives;

(iv) Sequence of learning activities;

(v) Performance assessment statement(s);

(F) The performance assessment(s) plan(s) for each competency, which shall include directions for the student and the evaluator, the performance conditions and criteria, and checklists, rubrics, or scoring guides used;

(G) A program map indicating the number of clock hours allowed for each course and for each unit or major topic within each course.

(i) If the school is approved to use a credit hour measurement, an explanation of how credit hours convert to clock hours must also be submitted;

(ii) If the instructional program is self-directed or measured in lessons, the total number of clock hours for the program and how that number is derived, the total number of lessons, and the maximum time allowed for completion of the program must be submitted.

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(H) A teaching syllabus for each course in each program, copies of written instructional materials used by the students or citations for specific editions of textbooks used, and an inventory of instructional equipment and materials (including software and AV materials) available to be used in the programs; the content of the syllabus shall follow the sample provided by the Department;

(I) The grading system, standards of satisfactory progress, attendance and performance required of students in the program, as referenced in 581-045-0019;

(c) Submit additional documentation that includes:

(A) A description of the instructional area or facility with space allocations and dimensions, equipment placement, and teaching stations for each program appropriately indicated;

(B) A description of the admission requirements and process for evaluating those requirements, including the criteria or tests used in the selection and placement of enrollees for the program;

(C) Labor market information, updated every two years with data no more than three years old, as described in OAR 581-045-0006(11); and

(D) A written placement assistance plan for assisting graduates in efforts to obtain employment in the field for which training was offered, or a related field, as described in 581-045-0019.

(2) The program advisory committee shall submit to the school and the Superintendent its analysis of the quality, content, duration and curriculum sequencing of the program of study, instructional materials, equipment and facilities provided to prepare the student in skills currently necessary for entry level employment in the occupation for which the program was designed:

(a) Program material prepared for the program advisory committee, as prescribed in subsections (1)(b) and (c) of this rule, will be filed with the Superintendent ;

(b) The Superintendent may review:

(A) The school's program development procedures; and

(B) The program advisory committee's involvement in program development;

(c) The Superintendent will review the instructional design materials and the program advisory committee's analysis of the adequacy of the program and reject or accept the committee's findings. The Superintendent's written approval is required prior to commencement of any marketing, recruitment, enrollment or instructional activities.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 19-2010, f. 12-17-10, cert. ef. 1-1-11

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## Oregon Facilities Authority Chapter 172

**Rule Caption:** Amends Oregon Facilities Authority's Rules for Approving Projects; Adds Rule Specifying Amounts for Fees.

**Adm. Order No.:** OFA 1-2011

**Filed with Sec. of State:** 1-10-2011

**Certified to be Effective:** 1-10-11

**Notice Publication Date:** 10-1-2010

**Rules Adopted:** 172-005-0065

**Rules Amended:** 172-001-0005, 172-005-0000, 172-005-0010, 172-005-0020, 172-005-0030, 172-005-0040, 172-005-0050, 172-005-0060, 172-005-0070

**Subject:** The amended rules relate to OAR chapter 172, division 005, which contains the Authority's rules for evaluating and approving projects that qualify for tax-exempt financing. These amended rules make changes to certain procedures followed by the Authority, including a provision allowing the Authority to approve certain applications and approve the financing proposed in those applications at the same meeting; add a requirements that if bonds receive a rating of investment grade but below BBB+, the participating institution must procure a second rating of at least investment grade; provide that unrated bonds or bonds not receiving a rating of at least investment grade may be sold only to "qualified institutional buyers" as defined under federal law; allow such bonds to be sold to more than three qualified institutional buyers; clarify that the Authority may require participating institutions to provide indemnity and other contractual obligations for any bonds, not just those sold in a public offering; amend the definition of "public offering", and expand the ability of the Authority to modify the requirements for the financing

of any low income housing project. A new rule specifies the amounts for the application fee and closing fees; indicates that the Authority may collect a reasonable share of its annual costs and charges in connection with audits performed and services rendered; allows the Authority to increase fees for transactions that involve new or complex financing structures or special provisions; and requires the participating institution to pay fees charged by the Authority's bond counsel and financial advisor.

**Rules Coordinator:** Gwen Griffith—(503) 802-5710

### 172-001-0005

#### Model Rules of Procedure

The Model Rules of Procedure under the Administrative Procedure Act, as promulgated by the Attorney General of the State of Oregon, effective as of February 12, 2010, are adopted as the rules of procedure for administrative rulemaking and other administrative law functions of the Authority.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Oregon Facilities Authority.]

Stat. Auth.: ORS 183.341(1) & 289.240(2)

Stats. Implemented: ORS 183.341

Hist.: HECF 1-1990(Temp), f. & cert. ef. 1-30-90; HECF 3-1990, f. & cert. ef. 6-14-90; OFA 1-2011, f. & cert. ef. 1-10-11

### 172-005-0000

#### Form of Application for Financing

Any participating institution desiring to obtain financing for a project through the Authority shall file with the Executive Director an application in the manner and form approved by the Authority, which shall be accompanied by a non-refundable application fee in the amount prescribed in OAR 172-000-0065(2). In addition to the information called for by the application, a participating institution may be required to provide such additional information and supporting materials concerning the participating institution and the proposed project as the Authority or the Executive Director deems necessary or appropriate in order to enable the request for financing to be properly evaluated.

Stat. Auth.: ORS 289.240(2) & 289.125(1)

Stats. Implemented: ORS 289.125

Hist.: HECF 2-1990(Temp), f. & cert. ef. 3-26-90; HECF 4-1990, f. & cert. ef. 10-4-90; OFA 1-2011, f. & cert. ef. 1-10-11

### 172-005-0010

#### Processing of Applications

(1) Upon receipt of a substantially complete application for financing and review thereof by the Executive Director and the Authority's financial advisor and bond counsel, the Executive Director shall, at the earliest practicable time, call a meeting of the Authority by giving notice thereof in the manner required by law, and shall place on the agenda for the meeting such substantially complete application for consideration by the Authority. For purposes of this section, an application shall be deemed to be substantially complete if it contains all required information and is accompanied by all required supporting materials other than the feasibility study (if required), the commitment for credit enhancement (if any), the 501(c)(3) determination letter from the Internal Revenue Service and such other items and information the absence of which, in the judgment of the Executive Director, will not materially impair the ability of the Authority to properly evaluate and act upon the application.

(2) The Executive Director shall cause a copy of each application to be delivered to each member of the Authority, the Treasurer, bond counsel and the financial adviser as soon as practicable after receipt and review thereof by the Executive Director. In addition, within a reasonable time prior to the meeting of the Authority at which an application is to be considered, the Executive Director shall deliver to each member of the Authority the Executive Director's written summary of the proposed project and financing and any recommendations with respect thereto.

Stat. Auth.: ORS 289.240(2) & 289.125(1)

Stats. Implemented: ORS 289.005(9)

Hist.: HECF 2-1990(Temp), f. & cert. ef. 3-26-90; HECF 4-1990, f. & cert. ef. 10-4-90; OFA 1-2011, f. & cert. ef. 1-10-11

### 172-005-0020

#### Consideration of Application by the Authority

(1) At the meeting for which an application has been placed on the agenda, the Authority shall consider whether to approve or disapprove such application; provided that action by the Authority on an application may be deferred to a later meeting upon the vote of a majority of the members of the Authority. With the permission of the chairperson of the Authority and subject to such reasonable regulation as may be imposed from time to time



# ADMINISTRATIVE RULES

by the Authority or the chairperson of the Authority, representatives of the participating institution filing the application and members of the public shall have the right to address the Authority, orally or in writing, concerning the merits of the proposed project and financing plan. The Authority, at any time while an application is pending, may in its discretion require the participating institution filing such application to provide additional information with respect to, or clarification of, any matter pertaining to the application, the participating institution, the proposed project or the financing thereof as the Authority determines to be reasonably necessary, convenient or appropriate to the Authority's discharge of its functions under ORS Chapter 289 or these rules.

(2) In considering whether to approve or disapprove an application, the Authority shall consider the extent to which the proposed project qualifies as a "project" within the meaning of ORS 289.005 in addition to any other factors it deems relevant, which may include any of the following:

(a) The extent to which the proposed project and the financing plan conform to the requirements under the Internal Revenue Code for federal tax-exempt financing or are eligible for a federal tax credit or subsidy;

(b) The economic viability of the proposed project, including the creditworthiness of the participating institution and credit enhancement provider (if any), the experience of the participating institution in constructing, equipping and operating projects of the type proposed, and the likelihood that all amounts owing on any bonds issued to finance the proposed project will be paid when due;

(c) The public benefits expected to be derived from the proposed project, including the extent to which the proposed project furthers the objectives sought to be promoted under ORS 289.005 to 289.240, and the benefits to and impact on the community in which the project is to be located;

(d) The ability of the participating institution to provide such information concerning itself and the proposed project as may be necessary or appropriate in order to ensure that any bonds issued are sold on the basis of full and complete disclosure of all material information; and

(e) The likelihood that any bonds issued can be successfully marketed at rates of interest which will not jeopardize the economic viability of the proposed project or the participating institution.

(3) Approval by the Authority of an application for financing shall be by a resolution in the form provided by the Authority's bond counsel, but with such additional provisions, terms or conditions as the Authority deems necessary or appropriate, which resolution shall require the execution and delivery by the participating institution of a preliminary agreement regarding the requested financing substantially in the form which is attached to the resolution as an exhibit. Upon the approval of an application by the Authority, the Executive Director shall promptly request the Treasurer to consider the approval or disapproval of the application. Notwithstanding the approval of an application and regardless of whether the legal requirements and other terms and conditions imposed are met, the approval of an application shall not bind the Authority or the Treasurer to proceed with the requested financing, but shall merely evidence the intent of the Authority and the Treasurer to proceed with the financing subject always to the exercise of their discretion to refuse to proceed. Unless extended by the Authority upon request of the participating institution that filed the application, the financing of a project described in an approved application must be closed within six months of the date upon which such application is approved by the Authority; provided that the foregoing shall not preclude a participating institution from resubmitting an application for the financing of a project which was not closed within such six months period (as the same may have been extended by the Authority), but such resubmitted application shall be filed in the same manner and accompanied by payment of the application fee required by OAR 172-005-0065(2).

(4) If an application is not approved by the Authority, the participating institution filing such application may request that such application be placed on the agenda for the Authority's next regular meeting for reconsideration.

Stat. Auth.: ORS 289.240(2) & 289.125(1)

Stats. Implemented: ORS 289.005(11), 289.010, 289.125 & 289.200

Hist.: HECF 2-1990(Temp), f. & cert. ef. 3-26-90; HECF 4-1990, f. & cert. ef. 10-4-90; OFA 1-2011, f. & cert. ef. 1-10-11

## 172-005-0030

### Preliminary Agreement

Immediately following approval of an application by the Authority and the Treasurer, the Executive Director, acting for and on behalf of the Authority, and the participating institution filing such application shall execute and deliver a preliminary agreement described in OAR 172-005-0020(3) that shall contain appropriate provisions, terms and conditions concerning the requested financing, including the agreement of the participat-

ing institution to pay costs related to the proposed financing, whether or not the financing is closed, and the undertaking of the participating institution to indemnify and hold harmless the State of Oregon, the Authority, and their respective officials, members, officers, staff and employees from and against any and all claims, losses or damages, howsoever arising, incurred in connection with the proposed project or the financing thereof, regardless of whether or not the financing proceeds.

Stat. Auth.: ORS 289.240(2) & 289.125(1)

Stats. Implemented: ORS 289.240(2) & 289.125(1)

Hist.: HECF 2-1990(Temp), f. & cert. ef. 3-26-90; HECF 4-1990, f. & cert. ef. 10-4-90; OFA 1-2011, f. & cert. ef. 1-10-11

## 172-005-0040

### Approval of Financing by Authority; Issuance of Bonds; Single Meeting Approval Process

(1) Except as provided in OAR 172-005-0040(2), at such time as the Executive Director determines that all legal and other requirements for the issuance of bonds to finance a proposed project described in an approved application which has not expired have been met or will be met prior to the issuance of any bonds to finance such project, including but not limited to the fulfillment of any terms or conditions set forth in the resolution approving such application or the preliminary agreement pertaining thereto, the Executive Director shall call a meeting of the Authority at the earliest practicable time by giving notice thereof in the manner required by law, and shall place a resolution regarding the financing of such project on the agenda for the meeting of the Authority. Such resolution shall be in the form prepared by bond counsel and shall be distributed by the Executive Director to the members of the Authority prior to the meeting together with the Executive Director's written summary of the proposed financing and any recommendations with respect thereto. The indenture of trust, loan or lease purchase agreement, official statement (if any), bond purchase contract and similar operative documents, instruments and agreements related to the proposed financing, all in substantially final form, shall be placed on file with the Executive Director by the participating institution prior to the time such resolution is considered by the Authority and shall be available for inspection by members of the public. If the Authority approves the proposed financing, the Executive Director shall forward a certified copy of the resolution approving the proposed financing to the Treasurer together with a written request that the Treasurer consider authorizing the issuance of bonds for the purpose of financing the related project.

(2) The Authority may approve certain applications and approve the financings proposed in such applications at the same meeting, subject to such terms and conditions as the Authority in its discretion may impose. Approval of an application and approval of a proposed financing at the same meeting may be appropriate for assignment and assumption transactions, projects undertaken by participating institutions with significant experience in the bond market, refundings of existing Authority bonds, and certain transactions pursuant to the Authority's Small Nonprofit Accelerated Program (SNAP) bond issuance process. Approval shall be granted by a resolution of the Authority in the form prepared by bond counsel, and the resolution shall be distributed by the Executive Director to the members of the Authority prior to the meeting together with the Executive Director's written summary of the proposed financing and any recommendations with respect thereto. When available, the indenture of trust, loan or lease purchase agreement, official statement (if any), bond purchase contract and other operative documents, instruments and agreements related to the proposed financing, all in substantially final form, shall be placed on file with the Executive Director by the participating institution and shall be available for inspection by members of the public. The Executive Director shall certify as a condition to closing the fulfillment of any conditions or terms imposed by the Authority on its approval of the financing. At any time after adoption of a resolution of the Authority approving an application but before the financing is closed, the Executive Director may for any reason, and shall, upon request by the Treasurer or a member of the Authority, place on the agenda of a duly called meeting of the Authority the proposed financing for additional consideration by the Authority. If a proposed financing is placed on the agenda of a meeting of the Authority pursuant to this OAR 172-005-0040(2), the provisions of OAR 172-005-0040(1) shall apply to the approval of the proposed financing.

Stat. Auth.: ORS 289.240(2) & 289.125(1)

Stats. Implemented: ORS 289.125(5)(c), 289.205 & 289.220

Hist.: HECF 2-1990(Temp), f. & cert. ef. 3-26-90; HECF 4-1990, f. & cert. ef. 10-4-90; OFA 1-2011, f. & cert. ef. 1-10-11

# ADMINISTRATIVE RULES

## 172-005-0050

### Investment Grade Bonds; Agent for Disclosure Purposes

(1)(a) It is the policy of the Authority that all bonds proposed to be sold pursuant to a public offering shall have received an investment grade rating at the time of issuance and if such investment grade rating cannot be attained on the basis of the project or the participating institution's credit rating, the participating institution must procure an appropriate credit enhancement device which will secure the bonds in a manner that will result in an investment grade rating at the time of issuance. If bonds proposed to be sold pursuant to a public offering receive a rating of at least investment grade but below BBB+ by Standard & Poor's, Baa1 by Moody's Investors Service or BBB+ by Fitch, the participating institution shall procure a second rating on the bonds of at least investment grade at the time of issuance. In addition, it is the policy of the Authority that unrated bonds or bonds not receiving a rating of at least investment grade at the time of issuance may not be sold pursuant to a public offering and may be sold only to (i) a bank as defined in Section 3(a)(2) of the Securities Act of 1933, as amended (the "1933 Act"), or a savings and loan association or other institution described in Section 3(a)(5)(a) of the 1933 Act or (ii) qualified institutional buyers, as such term is defined under Rule 144A promulgated under the 1933 Act. The Authority, in its discretion, may make exceptions to the foregoing policy based upon such factors as it deems appropriate, which factors shall be set forth in the record of the Authority meeting granting any such exception.

(b) In connection with the issuance of any bonds, the Authority may require the participating institution and the underwriter to undertake certain contractual obligations and to provide indemnity or other protection to the Authority, the State of Oregon and their respective members, officials, officers and employees with respect to the requirements of federal and state securities laws, based on the advice of bond counsel or the Department of Justice of the State of Oregon and the established practice of other conduit bond issuers.

(2) As used in this section "investment grade" shall mean a rating of at least BBB- by Standard & Poor's, Baa3 by Moody's Investors Service or BBB- by Fitch.

(3) As used in this section "underwriter" shall mean any person conducting a public or other offering as managing underwriter, senior managing underwriter, placement agent, lead financial institution in a placement with several financial institutions or other similar role.

Stat. Auth.: ORS 289.240(2) & 289.125(1)

Stats. Implemented: ORS 289.205

Hist.: HECF 2-1990(Temp), f. & cert. ef. 3-26-90; HECF 4-1990, f. & cert. ef. 10-4-90; OFA 1-2011, f. & cert. ef. 1-10-11

## 172-005-0060

### Definition of Low Income

For purposes of bonds issued to finance any housing project, the term "low income" shall mean persons or families whose household income is not greater than eighty percent of the median income for the relevant area in which the project is to be located, with the relevant area to be determined by the Authority based upon such factors as it deems appropriate. A housing project shall be considered to be a low income housing project if, at all times during the period commencing on the later to occur of the date of issuance of the related bonds or the date of completion of the project and ending on the later to occur of fifteen years following such commencement date or the date of the final stated maturity of the bonds, not less than twenty percent of the units in the project are occupied by, or set aside and reserved for occupancy by, persons or families of low income (determined as of the date upon which such persons or families first occupy such units). It is the policy of the Authority in issuing bonds to finance low income housing projects to take such steps as shall be reasonable to maximize the number of low income housing units in each project without jeopardizing the economic viability of such project. Therefore in connection with the financing of any low income housing project, the Authority, in its discretion, may modify the requirements of this section.

Stat. Auth.: ORS 289.240(2) & 289.125(1)

Stats. Implemented: ORS 289.005(6)

Hist.: HECF 2-1990(Temp), f. & cert. ef. 3-26-90; HECF 4-1990, f. & cert. ef. 10-4-90; OFA 1-2011, f. & cert. ef. 1-10-11

## 172-005-0065

### Fees

(1) The Authority shall collect the fees set forth in OAR 172-005-0065(2) and (3) from an applicant that seeks to have a project declared eligible for financing. The fee identified in OAR 172-005-0065(2) may be collected even though the project has not been determined to be eligible for financing.

(2) The Authority shall collect a \$500 application fee from the applicant.

(3) The Authority shall collect the following closing fee:

(a) For Small Nonprofit Accelerated Program (SNAP) bonds: 0.5% of the amount of the bond up to \$600,000, plus 0.3% of the amount of the bond in excess of \$600,000.

(b) For other bonds:

(i) For bond issues up to \$5,000,000, 0.3% of the amount issued.

(ii) For bond issues between \$5,000,000 and \$10,000,000, \$15,000 plus 0.2% of the amount issued in excess of \$5,000,000.

(iii) For bond issues between \$10,000,000 and \$20,000,000, \$25,000 plus 0.15% of the amount issued in excess of \$10,000,000.

(iv) For bond issues over \$20,000,000, \$40,000 plus 0.05% of the amount issued in excess of \$20,000,000.

(c) For refinancing existing Authority-related bonds, 0.05% of the amount of the Authority-related bonds refinanced

(4) Payment of the closing fee by a participating institution shall not preclude the Authority from assessing against a participating institution a reasonable share of the Authority's annual costs and charges incurred in connection with the audits performed and other services rendered by the Secretary of State or the State Treasurer with respect to the Authority.

(5) For transactions that involve new or complex financing structures or special provisions, the Authority may increase any of the fees described in this Section to be charged to a participating institution, and any such increased fees will be stated in the resolution approving the application.

(6) In addition to the fees described in OAR 172-005-0065 (1) through (5) above, the participating institution will be required to pay the fees charged by or for the services of the Authority's bond counsel and financial advisor.

(7) If in the opinion of the Authority an amendment or action by the Authority in regard to the terms of an existing bond series is desirable or required, the participating institution will be required to pay the charges imposed by the Authority and the fees charged by its bond counsel to implement such amendment or action. From time to time the Authority may promulgate a schedule of a fixed charges for such amendments or actions, which charges may vary to reflect the complexity of the amendment or action or increased costs of the Authority.

Stat. Auth.: ORS 289.125(4) & ORS 289.125(5)

Stats. Implemented: ORS 289.125(4) & ORS 289.125(5)

Hist.: OFA 1-2011, f. & cert. ef. 1-10-11

## 172-005-0070

### Waiver of Requirements

Upon the recommendation of the Executive Director or at the request of any member of the Authority, the Authority may, in its discretion, waive any of the requirements of these administrative rules to the extent such requirements are not otherwise imposed by law. Any such waiver shall be by resolution of the Authority, and the resolution shall set forth the particular circumstances which, in the judgment of the Authority, warrant such waiver.

Stat. Auth.: ORS 289.240(2) & 289.125(1)

Stats. Implemented: ORS 289.240(2) & 289.125(1)

Hist.: HECF 2-1990(Temp), f. & cert. ef. 3-26-90; HECF 4-1990, f. & cert. ef. 10-4-90; OFA 1-2011, f. & cert. ef. 1-10-11

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

**Rule Caption:** Handling of Patient Mail in State Institutions.

**Adm. Order No.:** MHS 1-2011(Temp)

**Filed with Sec. of State:** 1-6-2011

**Certified to be Effective:** 1-7-11 thru 6-1-11

**Notice Publication Date:**

**Rules Adopted:** 309-100-0100, 309-100-0110, 309-100-0120, 309-100-0130, 309-100-0140, 309-100-0150

**Rules Suspended:** 309-102-0000, 309-102-0005, 309-102-0010, 309-102-0015, 309-102-0020, 309-102-0025

**Subject:** These rules are a comprehensive revision of those being suspended, as there were many changes. These rules relate to mail being sent and received by patients residing in each Oregon State

# ADMINISTRATIVE RULES

Hospital campus and the Blue Mountain Recovery Center. These rules accomplish the following:

- Protect patient rights related to the posting and receipt of mail.
- Specify the circumstances under which staff of those state institutions may confiscate a piece of mail arriving for, or being sent by a patient.
- Specify the procedures to be used when a piece of mail is confiscated.
- Protects the safety and security of those state institutions and all affiliated people.

**Rules Coordinator:** Richard Luthe—(503) 947-1186

## 309-100-0100

### Purpose and Scope

(1) Purpose. These rules prescribe the standards for handling mail belonging to patients in state institutions, including mail arriving for patients and mail patients are sending from the state institution.

(2) Scope. These rules apply to all individuals residing in a state institution as defined in OAR 309-102-0005.

Stat. Auth.: ORS 179.040, 409.050 & 426.385

Statutes Implemented: ORS 179.360 & 426.385

Hist.: MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-100-0110

### Definitions

(1) “Contraband” means any controlled substance, drug paraphernalia, unauthorized currency or any other article which by statute, rule, order or the state institution’s policies, is prohibited from being in a patient’s possession, and the use of which could endanger the safety or security of the institution.

(2) “Controlled Substance” means a drug or it’s immediate precursor classified under the federal Controlled Substances Act and as modified under ORS 475.035.

(3) “Division” means the Addictions and Mental Health Division of the Oregon Health Authority.

(4) “Drug Paraphernalia” means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of Oregon Revised Statute (ORS) 475.840 to 475.980 (ORS 475.525(2)).

(5) “Electronic Mail” means digital messages transmitted electronically.

(6) “Journalist Mail” means letter mail sent to news media organizations such as but not limited to newspapers, magazines and television station news departments.

(7) “Legal Mail” means any mail received from or addressed to any attorney, court, tribal official, elected official, disability rights organization or advocacy group that is part of the system outlined in ORS 192.517.

(8) “Limited Item” means any food, non-prescribed medicine or other article which is allowed for patient use, but which must be held or kept in a specific area for reasons of maintaining public health standards to ensure proper dosage or to limit it’s ingestion, viewing or other use to the owner of the item.

(9) “Mail” means any letter, post card, periodical or any other type of envelope or package, except for legal mail and journalist mail.

(10) “Patient” means a person who is residing in a state institution.

(11) “Prohibited Item” means:

- (a) Alcohol, controlled substances or drug paraphernalia;
- (b) Any item that reasonably could be used as or turned into a weapon or instrument of escape;

(c) Any item the possession of which is considered detrimental to the treatment of a specific patient and which is recorded as prohibited with the rationale in the patient’s chart by the treating physician; or

(d) Any item the possession of which is disallowed to a clearly defined portion of the patient population or to the entire patient population pursuant to the institution’s policies or other formal documents.

(12) “Reasonable Cause” means a person has knowledge or notice of facts or circumstances which would lead a person of ordinary care and prudence to have a strong suspicion.

(13) “Safety” means the institution and all patients and others persons within and around it are free from injury, threats, harassment or other dangers.

(14) “Security” means prevention of any patient’s potential escape from a state institution or the prevention of damage to institutional or personal property within the grounds of the state institution.

(15) “State Institution” means all Oregon State Hospital campuses or the Blue Mountain Recovery Center.

(16) “Superintendent” means the executive head of any state institution or that person’s designee.

(17) “Treatment Care Plan” means an individualized and comprehensive written plan of therapeutic interventions designed, in collaboration between the patient and his or her treatment team, and designed to facilitate rehabilitation of psychiatric symptoms and eventual independence.

Stat. Auth.: ORS 179.040, 409.050 & 426.385

Statutes Implemented: ORS 179.360 & 426.385

Hist.: MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-100-0120

### Patient Rights Related to Mail

(1) Except as outlined in OAR 309-100-0930 through 309-100-0950, all patients in state institutions shall have the right to communicate freely in person by sending and receiving sealed mail.

(2) All journalist, legal or other mail may be sent or delivered by hand or via any parcel delivery service.

(3) Except as provided in ORS 309-100-0930 through 309-100-0950, no employee or any person acting through or on behalf of the Division shall:

(a) Open, read, censor, inspect or otherwise examine any patient’s incoming or outgoing mail without the expressed permission of the patient who is the sender or the receiver of the mail;

(b) Prevent, obstruct or delay any patient’s outgoing mail from being promptly mailed;

(c) Prevent, obstruct or delay any patient’s incoming mail from being promptly delivered or forwarded to the patient.

(4) A patient shall be promptly informed, verbally and in writing, of:

(a) Any limitation to the right to send or receive sealed mail;

(b) Any item having been opened by staff pursuant to OAR 309-100-0930 through 309-100-0940; and

(c) Any item being held pursuant to 309-100-0930 through 309-100-0940.

(5) At the request of a patient with a need, an employee may assist in reading or sending mail. Need for this assistance shall first be documented in the patient’s Treatment Care Plan by the physician.

(6) Patients shall be provided a reasonable amount of writing material by the state institution. Stamps shall be available for purchase by patients with funds. Patients without funds will be provided a reasonable number of stamps by the state institution.

(7) The exchange of electronic mail is an earned privilege only and is related to the patient’s recent behaviors, current level of care and other privileges.

(8) The application of these rules may be contested by way of the state institution’s grievance procedures.

Stat. Auth.: ORS 179.040, 409.050 & 426.385

Statutes Implemented: ORS 179.360 & 426.385

Hist.: MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-100-0130

### Mail Suspected To Contain Contraband, Limited Items or Evidence of a Crime

(1) The superintendent may designate certain areas of the state institutions as locked high security areas if the superintendent finds that these areas require additional precautions to protect the safety and security of the facility.

(2) In locked high security areas, employees of the state institutions may open all except legal mail in the presence of the patient as prescribed in this rule, even though there may not be reasonable cause to believe that a specific piece of mail contains a prohibited or limited item.

(3) In order to ensure the safety and security of the institution and all affiliated people, the superintendent may additionally order:

(a) Mail be scanned with non-invasive technology including but not limited to x-rays or metal detectors;

(b) Mailed electronic equipment or other items which may contain contraband within, be subject to additional scrutiny, such as but not limited to turning the item on to ensure it’s basic functionality.



# ADMINISTRATIVE RULES

(4) When there is reasonable cause to suspect mail contains a limited item the superintendent may order the item be opened by staff in the presence of the patient.

(a) If a limited item is found within the mail, it will be stored and made available to the patient pursuant to the state institution's related policies and procedures.

(b) If there is no limited or prohibited item within, the patient may retain possession of the mail.

(5) When there is reasonable cause to suspect mail contains evidence of a real or potential crime, the following steps shall occur:

(a) If the real or potential crime may immediately threaten the security of the institution or the health or safety of any affiliated person, the superintendent may hold, open or otherwise inspect the mail.

(b) If the real or potential crime does not appear to immediately threaten the security of the institution or the health or safety of any affiliated person, the superintendent is authorized to:

(A) Contact a law enforcement agency and request a judicial warrant to open the mail and

(B) Hold the mail until either the judicial warrant is denied or the warrant is received and the item is confiscated by the law enforcement agency.

(c) If the judicial warrant is denied the item must promptly be returned to and opened in the presence of the patient.

(d) If the item is confiscated, opened and examined and found to be permissible the item must promptly be returned to the patient.

(e) If the item is found to contain evidence of a real or potential crime, it will remain in possession of the law enforcement agency for further action.

(4) The intended recipient of any mail withheld pursuant to this rule will be promptly informed of the action unless there is reasonable cause to believe that doing so may:

(a) Increase the potential threat to the security of the institution or the health or safety of any affiliated person or

(b) Destroy or adversely alter the suspected evidence of a real or potential crime.

Stat. Auth.: ORS 179.040, 409.050 & 426.385  
Statutes Implemented: ORS 179.360 & 426.385  
Hist.: MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-100-0140

### Disposition of Mail Retained or Returned To Patient

(1) Once opened under staff supervision for inspection, permissible items shall not be read or otherwise further inspected and shall be delivered promptly to the patient.

(2) Any item retained from a patient's mail shall be clearly marked to identify, at minimum the date of the inspection and hold, the patient's name, the name and address of the sender, a description of the held items and both the printed name and the signature of the employee conducting the process. The item shall then be handled as provided in rules established by the Division for the handling of personal property of patients in state institutions.

(3) When any item is confiscated by a law enforcement agency, each part of the process shall be documented in the patient's chart with at minimum the date of inspection and confiscation, the patient's name, the name and address of the sender, a description of the confiscated item(s) and both the printed name and the signature of the employee who witnessed the law enforcement's confiscation.

(4) All documentation related to any held item shall be in writing and kept in the patient's chart. The patient shall receive a legible copy of each document.

Stat. Auth.: ORS 179.040, 409.050 & 426.385  
Statutes Implemented: ORS 179.360 & 426.385  
Hist.: MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-100-0150

### Notice to Patients and Employees

(1) Upon admission to the state institution, patients shall be informed of the institution's policies and procedures which implement these rules, all their legal rights as detailed in ORS 426.385 and instructions on how to obtain a copy of these rules.

(2) The superintendent of the state institution shall ensure these rules and any related policies and procedures are thoroughly explained to each employee upon the commencement of their employment and to each current employee when deemed a needed subject of supervision or of on-going training.

(3) Violation of these rules and any related institutional policies or procedures by an employee of the Division shall constitute cause for disciplinary action.

Stat. Auth.: ORS 179.040, 409.050 & 426.385  
Statutes Implemented: ORS 179.360 & 426.385  
Hist.: MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-102-0000

### Purpose and Statutory Authority

(1) Purpose. These rules prescribe procedures for the handling of incoming and outgoing mail of patients and residents in state institutions.

(2) Statutory Authority. These rules are authorized by ORS 430.041 and 179.040 and carry out the provisions of 179.321, 426.385, 426.395, and 427.031.

Stat. Auth.: ORS 179, 426, 427 & 430

Stats. Implemented:

Hist.: MHD 17-1980(Temp), f. & ef. 6-30-80; MHD 19-1980, f. & ef. 12-10-80; MHD 19-1982, f. 12-28-82, ef. 1-28-83, Renumbered from 309-021-0030(1) and (2); Suspended by MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-102-0005

### Definitions

As used in these rules:

(1) "Administrator" means the Assistant Director, Human Resources, and Administrator for Mental Health.

(2) "Division" means the Mental Health and Developmental Disability Services Division of the Department of Human Services.

(3) "Legal Mail" means any mail from, or addressed to, any attorney, any court, and any legal aid bureau or service.

(4) "Mail" means sealed envelopes and parcels.

(5) "Patient" means a person who is receiving care and treatment in a state institution for the mentally ill.

(6) "Prohibited Item" means:

(a) Alcoholic beverages, controlled substances, and prescription and non-prescription drugs or medications;

(b) Any item that reasonably can be used as a weapon or instrument of escape;

(c) Any item the possession of which is detrimental to the treatment and training or health and safety of the patients or residents in a particular ward or cottage and which is prohibited in writing and posted on the affected ward or cottage; and

(d) Any item the possession of which is detrimental to the treatment and training of an individual patient or resident and which is recorded in the treatment and training orders section of the patient's or resident's chart by the treating physician or qualified mental retardation professional.

(7) "Qualified Mental Retardation Professional" means a person who meets the professional requirements prescribed by 42 CFR 442.401 or as amended.

(8) "Reasonable Cause" means that the person has knowledge or notice of facts and circumstances which would lead a person of ordinary care and prudence to have a strong suspicion.

(9) "Resident" means a person who is receiving care, treatment, and training in a state institution for the mentally retarded.

(10) "State Institution" means Dammasch State Hospital in Wilsonville, Oregon State Hospital in Salem, Fairview Training Center in Salem, and Eastern Oregon Hospital and Training Center in Pendleton.

(11) "Superintendent" means the executive head of the state institution as listed in section (10) of this rule.

Stat. Auth.: ORS 179, 426, 427 & 430

Stats. Implemented:

Hist.: MHD 17-1980(Temp), f. & ef. 6-30-80; MHD 19-1980, f. & ef. 12-10-80; MHD 19-1982, f. 12-28-82, ef. 1-28-83, Renumbered from 309-021-0030(3); Suspended by MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-102-0010

### Policy

(1) All patients and residents in state institutions shall have the right to communicate freely in person by sending and receiving sealed mail.

(2) Except as provided in section (3) of this rule, no employee or any person acting through, or on the behalf of, the Division shall:

(a) Open, read, censor, inspect, or otherwise examine any patient's or resident's incoming or outgoing mail without the expressed permission of the patient or resident who is the sender or the receiver of the mail. Patients and residents are responsible for any items received by them by mail, and should request staff to record any property received on the personal property record;

(b) Prevent, obstruct, or delay any patient's or resident's outgoing mail from being promptly mailed;

(c) Prevent, obstruct, or delay any patient's or resident's incoming mail from being delivered or forwarded promptly to the patient or resident.

(3)(a) Unless the patient or resident objects, an employee may provide assistance in reading or sending mail for those patients or residents who

# ADMINISTRATIVE RULES

have physical or mental handicapping conditions which interfere with the ability to use the mail. Need for this assistance shall be documented in the patient's or resident's chart by the physician or qualified mental retardation professional;

(b) When there is reasonable cause to suspect that mail contains a prohibited item, the procedure described in OAR 309-102-0015 shall be followed;

(c) When there is reasonable cause to suspect that incoming or outgoing mail contains evidence of a crime or potential crime, the superintendent, or the superintendent's designee, may hold mail for a reasonable period of time while a search warrant is being sought.

(4) Patients and residents shall be provided with a reasonable amount of writing material by the state institution. Stamps shall be available for purchase by the patient or resident at each state institution.

(5) The designation of an item as prohibited, the proposed disposition of the item, any interference with the delivery of incoming or outgoing mail, or any other application of these rules may be contested in accordance with OAR 309-118-0000 through 309-118-0050 (Grievance Procedures for Use in State Institutions).

(6) Violation of the rights, policies, and procedures set forth in these rules by an employee of the Division shall constitute cause for disciplinary action.

Stat. Auth.: ORS 179, 426, 427 & 430

Stats. Implemented:

Hist.: MHD 17-1980(Temp), f. & ef. 6-30-80; MHD 19-1980, f. & ef. 12-10-80; MHD 27-1982, f. 12-28-82, ef. 1-28-83, Renumbered from 309-021-0030(4); Suspended by MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-102-0015

### Procedures

When there is reasonable cause to suspect that mail contains a prohibited item, the procedure for inspecting mail set forth below shall be followed:

(1) The superintendent of the state institution, or his designee, may require the patient or resident to open the mail in the presence of an employee of the state institution or require an employee to open the mail in the presence of the patient or resident.

(2) A prohibited item found in incoming mail shall be removed and placed in an envelope or other suitable container that shall be clearly marked to identify at least the following:

(a) The date of inspection and confiscation;

(b) The name of the patient or resident to whom the mail was addressed;

(c) The name and address of the sender;

(d) A list and description of the item(s) confiscated; and

(e) The signature of the employee conducting the inspection and authorizing the confiscation.

(3) Copies of the signed list shall serve as a receipt. One copy shall be placed in the patient's or resident's record, one copy shall remain with the item(s), and one copy shall be given to the patient or resident.

(4) The original envelope or other container of mail which has been inspected for prohibited items or from which a prohibited item has been removed shall be marked to correspond exactly with the identification required by section (2) of this rule.

(5) Nonprohibited items shall not be read or otherwise subjected to further inspection and shall be delivered immediately to the patient or resident.

(6) Items confiscated from incoming mail shall be handled as provided in rules established by the Division for the handling of personal property of patients and residents in state institutions.

(7) The manner of disposition of a prohibited item shall be in writing and kept as a record by the state institution.

Stat. Auth.: ORS 179, 426, 427 & 430

Stats. Implemented:

Hist.: MHD 17-1980(Temp), f. & ef. 6-30-80; MHD 19-1980, f. & ef. 12-10-80; MHD 27-1982, f. 12-28-82, ef. 1-28-83, Renumbered from 309-021-0030(4); Suspended by MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-102-0020

### Special Exception

From time to time, the Administrator may designate certain areas of the state institutions as locked high security areas. The superintendent of the state institutions shall request in writing such designation by ward or cottage. The Administrator shall approve or disapprove the designation within 30 days of the request. In such areas, employees of the state institutions are authorized to open all mail in the presence of the patient or resident except legal mail as prescribed in OAR 309-102-0015, even though

there may not be reasonable cause to believe that a specific piece of mail contains a prohibited item.

Stat. Auth.: ORS 179, 426, 427 & 430

Stats. Implemented:

Hist.: MHD 17-1980(Temp), f. & ef. 6-30-80; MHD 19-1980, f. & ef. 12-10-80; MHD 27-1982, f. 12-28-82, ef. 1-28-83, Renumbered from 309-021-0030(5); Suspended by MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

## 309-102-0025

### Notice to Patients, Residents, and Employees

(1) Upon admission, state institutions shall inform patients and residents, orally and in writing, of the rights, policies, and procedures set forth in these rules. In addition, a clear and simple statement of the title and number of these rules, their general purpose, and instructions on how to obtain a copy of the rules and how to seek advice about their content shall be prominently displayed in areas frequented by patients and residents in all state institutions.

(2) All employees of state institutions shall be notified in writing at the commencement of their employment, or, for present employees, within a reasonable time of the effective date of these rules, of the rights, policies, and procedures set forth in these rules.

Stat. Auth.: ORS 179, 426, 427 & 430

Stats. Implemented:

Hist.: MHD 17-1980(Temp), f. & ef. 6-30-80; MHD 19-1980, f. & ef. 12-10-80; MHD 27-1982, f. 12-28-82, ef. 1-28-83, Renumbered from 309-021-0030(4); Suspended by MHS 1-2011(Temp), f. 1-6-11, cert. ef. 1-7-11 thru 6-1-11

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## Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

**Rule Caption:** Annual Relative Value Unit update, copayments assessed for MCO enrollees and technical corrections.

**Adm. Order No.:** DMAP 39-2010

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010, 12-1-2010

**Rules Amended:** 410-120-0030, 410-120-1195, 410-120-1200, 410-120-1230, 410-120-1280, 410-120-1295, 410-120-1340

**Subject:** The General Rules program administrative rules govern Division payment for services to clients. The Division amended the following:

- OAR 410-120-0030, Children's Health Insurance Program – to add Lane County to participate in the prenatal care pilot providing prenatal care during pregnancy and labor and delivery services under CHIP for women who are not eligible for Medicaid and who are at or below 185% of FPL, subject to the Centers for Medicare and Medicaid Services (CMS) approval.

- OAR 410-120-1195 SB 5548 population – This rule includes prescription drug coverage for a limited non Medicaid population. The rule references "Average Wholesale price" which the Pharmacy program uses as a payment methodology for prescription drugs. This rule is revised to reference the OAR the pharmacy program uses to describe the payment method.

- OAR 410-120-1200 Excluded services – Technical correction to clarify that telephone calls are a non-covered service, except as specified in program rules.

- OAR 410-120-1230 Co-payment – to assess co-payments to those enrolled in a Managed Care Organization (MCO) to the same extent as fee-for service. This policy is changed due to reductions put forth for the Governors mandatory 9% agency reductions.

- OAR 410-120-1280 Billing-Technical correction needed to add a sentence that was left out of a prior rule filing to subsection (I)(ii).

- OAR 410-120-1295 Non-Participating provider – Technical correction needed for reference to 1932(b) (2) of the Social Security Act however, this provision was never signed into law, therefore the reference is being deleted. This revision does not change any provision of the rule.

- OAR 410-120-1340 Payment – to reflect the annual update to the CMS Relative Value Units (RVU) for physician services, and to update the description of the method used to price physician administered drugs.

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• Other text may be revised to improve readability and to take care of necessary “housekeeping” corrections for all rules listed above.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-0030

### Children’s Health Insurance Program

(1) The Children’s Health Insurance Program (CHIP) is a federal non-entitlement program for children under 19 years of age that provides health coverage for uninsured, low-income children who are ineligible for Medicaid and meet the CHIP eligibility requirements. The CHIP program is administered by the Department of Human Services (Department) in accordance with the Oregon Health Plan waiver and the CHIP state plan. The General Rules Program (OAR 410-120-0000 et. seq.) and Oregon Health Plan Program rules (OAR 410-141-0000 et. seq.) applicable to the Medicaid program are also applicable to the Department’s CHIP program.

(2) Eligibility criteria, including but not limited to income methodologies and citizenship requirements for medical assistance applicable to children under the age of 19 years, are established in OAR chapter 461 through the program acronym OHP-CHP.

(3) Benefit package of covered services: Children determined eligible for CHIP receive the same OHP Plus benefits as covered under Medicaid categorically needy program. (For benefits refer to OAR 410-120-1210).

(4) CHIP prenatal coverage for women not eligible for Medicaid at or below 185% of the FPL:

(a) Notwithstanding subsections (2) and (3) of this rule, pregnant women, who are not eligible for Medicaid and who reside in the participating counties during pregnancy will receive expanded medical services (OHP Plus benefit package, as limited under subsection (d) of this subsection) to provide prenatal care for the unborn child and labor and delivery services through this pilot program. The benefit identifier for this category is BMH, PERC code CX:

- (A) Effective 4/1/08 Multnomah and Deschutes;
- (B) Effective 10/1/09 Benton, Clackamas, Hood River and Jackson;
- (C) Effective 1/1/11 Lane.

(b) This population is exempt from managed care enrollment. The preferred service delivery system will be Primary Care Management (PCM). Fee-for-service (FFS) enrollment will be available by exception for continuity of care or other Department-approved reasons that could justify disenrollment from a PCM under OAR 410-141-0085;

(c) Pilot project services continue through labor and delivery. The day after pregnancy ends, eligibility for medical services is based on eligibility categories established in OAR chapter 461;

(d) The following services are not covered for the pilot project:

- (i) Postpartum care beyond the global payment;
- (ii) Sterilization;
- (iii) Abortion;
- (iv) Death with dignity services;
- (v) Hospice.

Stat. Auth.: ORS 409.010, 409.040 & 409.050  
Stats. Implemented: ORS 414.025 & 414.065

Hist.: DMAP 7-2008(Temp), f. 3-17-08 & cert. ef. 4-1-08 thru 9-15-08; DMAP 14-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 29-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-25-10; DMAP 37-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 18-2010, f. 6-23-10, cert. ef. 7-1-10; DMAP 23-2010, f. & cert. ef. 9-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-120-1195

### SB 5548 Population

Effective for services rendered on or after January 1, 2004.

(1) Certain individuals previously participating in the OSIP-MN Medically Needy Program as of January 31, 2003, and who are identified by the Department of Human Services (Department) with specific health-related conditions as outlined in the Joint Ways and Means budget note accompanying Senate Bill 5548 (2003) shall be referred to as SB 5548 clients.

(2) SB 5548 clients are eligible for a State-funded, limited, prescription drug benefit for covered drugs described in subsection (3) of this rule.

(3) Eligibility for and access to covered drugs for SB 5548 clients:

(a) SB 5548 clients must have been participating in the former OSIP-MN Medically Needy Program as of January 31, 2003, and as of that date had a medical diagnosis of HIV or organ transplant status;

(b) SB 5548 clients receiving anti-retroviral and other prescriptions necessary for the direct support of HIV symptoms:

(A) Must agree to participate in the Department’s CareAssist Program in order to obtain access to this limited prescription drug benefit; and

(B) Prescriptions are limited to those listed on the CareAssist Formulary which can be found at [www.dhs.state.or.us/publichealth/hiv/careassist/frmlry.cfm](http://www.dhs.state.or.us/publichealth/hiv/careassist/frmlry.cfm);

(c) SB 5548 clients receiving prescriptions necessary for the direct support of organ transplants are limited:

(A) Drug coverage includes any Medicaid reimbursable immunosuppressive, anti-infective or other prescriptions necessary for the direct support of organ transplants;

(B) Some drug classes are subject to restrictions or limitations based upon the Practitioner-Managed Prescription Drug Plan, OAR 410-121-0030.

(4) Reimbursement for covered prescription drugs is limited by the terms and conditions described in this rule. This limited drug benefit provides State-funded reimbursement to pharmacies choosing to participate according to the terms and conditions of this rule:

(a) The Department will send SB 5548 clients a letter from the Department, instead of a Medical Care Identification, which will document their eligibility for this limited drug benefit;

(b) Retail pharmacies choosing to participate will be reimbursed for covered prescription drugs for the direct support of organ transplants described in subsection (3)(c) of this rule based upon Oregon Medicaid reimbursement levels as specified in the Division’s Pharmaceutical Services Program administrative rules 410-121-0155 and 410-121-0160.

(c) The Department pharmacy benefits manager, will process retail pharmacy drug benefit reimbursement claims for SB 5548 clients;

(d) Mail order reimbursement will be subject to the Department contract rates;

(e) Prescription drugs through the CareAssist program will be subject to the Department contract rates;

(f) Reimbursement for this limited drug benefit is not subject to the following rules:

(A) 410-120-1230, Client Copayments;

(B) 410-121-0300, Federal Upper Limit (FUL) for prescription drugs.

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050 & 409.110

Stats. Implemented: ORS 414.025 & 414.065

Hist.: OMAP 28-2003(Temp), f. & cert. ef. 4-1-03 thru 9-1-03; OMAP 44-2003, f. & cert. ef. 6-30-03; OMAP 45-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 89-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-120-1200

### Excluded Services and Limitations

(1) Certain services or items are not covered under any program or for any group of eligible clients. If the client accepts financial responsibility for a non-covered service, payment is a matter between the provider and the client subject to the requirements of OAR 410-120-1280.

(2) The Division of Medical Assistance Programs (Division) shall make no payment for any expense incurred for any of the following services or items that are:

(a) Not expected to significantly improve the basic health status of the client as determined by Division staff, or its contracted entities, for example, the Division’s Medical Director, medical consultants, dental consultants or Quality Improvement Organizations (QIO);

(b) Not reasonable or necessary for the diagnosis and treatment of disability, illness, or injury;

(c) Determined not medically or dentally appropriate by Division staff or authorized representatives, including Acumentra or any contracted utilization review organization;

(d) Not properly prescribed as required by law or administrative rule by a licensed practitioner practicing within his or her scope of practice or licensure;

(e) For routine checkups or examinations for individuals age 21 or older in connection with participation, enrollment, or attendance in a program or activity not related to the improvement of health and rehabilitation of the client. Examples include exams for employment or insurance purposes;

(f) Provided by friends or relatives of eligible clients or members of his or her household, except when the friend, relative or household member:

(A) Is a health professional, acting in a professional capacity; or

(B) Is directly employed by the client under the Department of Human Services (Department) Seniors and People with Disabilities Division (SPD) Home and Community Based Waiver or the SPD administrative rules, OAR 411-034-000 through 411-034-0090, governing Personal Care Services covered by the State Plan; or

(C) Is directly employed by the client under the Children, Adults and Families Division (CAF) administrative rules, OAR 413-090-0100 through 413-090-0220, for services to children in the care and custody of the Department who have special needs inconsistent with their ages. A family



# ADMINISTRATIVE RULES

member of a minor client (under the age of 18) must not be legally responsible for the client in order to be a provider of personal care services;

(g) For services or items provided to a client who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, except such services as designated by federal statute or regulation as permissible for coverage under the Division's administrative rules;

(h) Needed for purchase, repair or replacement of materials or equipment caused by adverse actions of clients to personally owned goods or equipment or to items or equipment that the Division rented or purchased;

(i) Related to a non-covered service; some exceptions are identified in the individual provider rules. If the Division determines the provision of a service related to a non-covered service is cost-effective, the related medical service may, at the discretion of the Division and with Division prior authorization (PA), be covered;

(j) Considered experimental or investigational, including clinical trials and demonstration projects, or which deviate from acceptable and customary standards of medical practice or for which there is insufficient outcome data to indicate efficacy;

(k) Identified in the appropriate program rules including the Division's Hospital Services Program administrative rules, Revenue Codes Section, as non-covered services.

(l) Requested by or for a client whom the Division has determined to be non-compliant with treatment and who is unlikely to benefit from additional related, identical, or similar services;

(m) For copying or preparing records or documents that except those Administrative Medical Reports requested by the branch offices or the Division for casework planning or eligibility determinations;

(n) Whose primary intent is to improve appearances;

(o) Similar or identical to services or items that will achieve the same purpose at a lower cost and where it is anticipated that the outcome for the client will be essentially the same;

(p) For the purpose of establishing or reestablishing fertility or pregnancy or for the treatment of sexual dysfunction, including impotence,

(q) Items or services which are for the convenience of the client and are not medically or dentally appropriate;

(r) The collection, processing and storage of autologous blood or blood from selected donors unless a physician certifies that the use of autologous blood or blood from a selected donor is medically appropriate and surgery is scheduled;

(s) Educational or training classes that are not medically appropriate (Lamaze classes, for example);

(t) Outpatient social services except maternity case management services and other social services described as covered in the individual provider rules;

(u) Plasma infusions for treatment of Multiple Sclerosis;

(v) Post-mortem exams or burial costs, or other services subsequent to the death of a client;

(w) Radial keratotomies;

(x) Recreational therapy;

(y) Telephone calls, except for:

(A) Tobacco cessation counseling, as described in OAR 410-130-0190;

(B) Maternity case management as described in OAR 410-130-0595;

(C) Telemedicine as described in OAR 410-130-0610; and

(D) Services specifically identified as allowable for telephonic delivery when appropriate in the mental health and chemical dependency procedure code and reimbursement rates published by the Addiction and Mental Health Division;

(z) Transsexual surgery or any related services or items;

(aa) Weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs. Food supplements will not be authorized for use in weight loss;

(bb) Whole blood (whole blood is available at no cost from the Red Cross); the processing, storage and costs of administering whole blood are covered;

(cc) Immunizations prescribed for foreign travel;

(dd) Services that are requested or ordered but not provided (i.e., an appointment which the client fails to keep or an item of equipment which has not been provided to the client);

(ee) DUII-related services already covered by the Intoxicated Driver Program Fund as directed by ORS 813.270(1) and (5);

(ff) Transportation to meet a client's personal choice of a provider;

(gg) Pain center evaluation and treatment for unfunded condition/treatment pairs on the Oregon Health Services Commission's Prioritized List of Health Services;

(hh) Alcoholics Anonymous (AA) and other self help programs;

(ii) Medicare Part D covered prescription drugs or classes of drugs, and any cost sharing for those drugs, for Medicare-Medicaid Fully Dual Eligible clients, even if the Fully Dual Eligible client is not enrolled in a Medicare Part D plan. See OAR 410-120-1210 for benefit package.

Stat. Auth.: ORS 409.010, 409.110, 409.065 & 409.050

Stats. Implemented: ORS 414.065, 414.025

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76, Renumbered from 461-013-0030; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 103-1982, f. & ef. 11-1-82; AFS 15-1983(Temp), f. & ef. 4-20-83; AFS 31-1983(Temp), f. 6-30-83, ef. 7-1-83; AFS 43-1983, f. 9-2-83, ef. 10-1-83; AFS 61-1983, f. 12-19-83, ef. 1-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 78-1986(Temp), f. 12-16-86, ef. 1-1-87; AFS 10-1987, f. 2-27-87, ef. 3-1-87; AFS 29-1987(Temp), f. 7-15-87, ef. 7-17-87; AFS 54-1987, f. 10-29-87, ef. 11-1-87; AFS 51-1988(Temp), f. & cert. ef. 8-2-88; AFS 53-1988(Temp), f. 8-23-88, cert. ef. 9-1-88; AFS 58-1988(Temp), f. & cert. ef. 9-27-88; AFS 70-1988, f. & cert. ef. 12-7-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0055; 461-013-0103, 461-013-0109 & 461-013-0112; HR 5-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 19-1990, f. & cert. ef. 7-9-90; HR 23-1990(Temp), f. & cert. ef. 7-20-90; HR 32-1990, f. 9-24-90, cert. ef. 10-1-90; HR 27-1991 (Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0420, 410-120-0460 & 410-120-0480; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 6-1996, f. 5-31-96 & cert. ef. 6-1-96; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 12-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 22-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 8-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 17-2003(Temp), f. 3-13-03, cert. ef. 3-14-03 thru 8-15-03; OMAP 46-2003(Temp), f. & cert. ef. 7-1-03 thru 12-15-03; OMAP 56-2003, f. 8-28-03, cert. ef. 9-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 15-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-120-1230

### Client Co-payment

(1) Oregon Health Plan (OHP) Plus clients shall be responsible for paying a co-payment for some services. This co-payment shall be paid directly to the provider. A co-payment applies regardless of location of services rendered, i.e., provider's office or client's residence.

(2) The following services are exempt from co-payment:

(a) Emergency medical services, as defined in OAR 410-120-0000;

(b) Family planning services and supplies; and

(c) Prescription drug products for nicotine replacement therapy (NRT);

(3) The following clients are exempt from co-payments:

(a) Pregnant women;

(b) Children under age 19;

(c) Clients receiving services under the home and community based waiver and developmental disability waiver;

(d) Inpatients in a hospital, nursing facility, or Intermediate Care Facility for the Mentally Retarded (ICF/MR); and

(e) American Indian/Alaska Native (AI/AN) clients who are members of a federally recognized Indian tribe or receive services through Indian Health Services (IHS), tribal organization or services provided at an Urban Tribal Health Clinic as provided under Public Law 93-638.

(4) Services to a client cannot be denied solely because of an inability to pay an applicable co-payment. This does not relieve the client of the responsibility to pay applicable co-payment, nor does it prevent the provider from attempting to collect any applicable co-payments from the client; the co-payment is a legal debt, and is due and payable to the provider of service.

(5) A client must pay the co-payment at the time service is provided unless exempted in (2) and (3) above.

(6) OHP Standard co-payments are eliminated for OHP Standard clients effective June 19, 2004. Elimination of co-payments by this rule shall supercede any other General Rules Program rule, 410-120-0000 et seq; any Oregon Health Plan rule, OAR 410-141-0000 et seq; or individual Division program rule(s), that contain or refer to OHP Standard co-payment requirements.

(7) Except for prescription drugs, one co-payment is assessed per provider/ per visit/ per day unless otherwise specified in other Divisions' program administrative rules.

(8) Fee-For-Service co-payment requirements:

(a) The provider must not deduct the co-payment amount from the usual and customary fee submitted on the claim. Except as provided in sub-

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section (2) and (3) of this rule, the Division shall deduct the co-payment from the amount the Division pays to the provider (whether or not provider collects the co-payment from the client);

(b) If the Division's payment is less than the required co-payment, then the co-payment amount to equal to the Division's lesser required payment, unless the client or services is exempt according to exclusions listed in (2), (3) above. The client's co-payment shall constitute payment-in-full;

(c) Unless specified otherwise in individual program rules, and to the extent permitted under 42 CFR 1001.951 – 1001.952, the Division does not require providers to bill or collect a co-payment from the Medicaid client. The provider may choose not to bill or collect a co-payment from a Medicaid client, however, the Division will still deduct the co-payment amount from the Medicaid reimbursement made to the provider;

(d) Prescription drugs ordered through Division of Medical Assistance Program's (Division) Mail Order (a.k.a., Home-Delivery) Pharmacy program are exempt from co-payment.

(9) Managed care co-payment requirements:

(a) Unless specified otherwise in individual program rules, and to the extent permitted under 42 CFR 447.58 and 447.60, the Division does not require MCOs to bill or collect a co-payment from the Medicaid client. The MCO may choose not to bill or collect a co-payment from a Medicaid client, however, the Division will still deduct the co-payment amount from the Medicaid reimbursement made to the MCO;

(b) When an MCO is operating within the scope of the safe harbor regulation outlined in 42 CFR 1001.952(l), an MCO may elect to assess a co-payment on some of the services outlined in table 120-1230-1 but not all. The MCO must assure they are working within the provisions of 42 CFR 1003.102(b)(13).

(10) Services that require co-payments are listed in Table 120-1230-1:

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

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110

Stat. Implemented: ORS 414.025, 414.065

Hist.: OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 73-2003, f. & cert. ef. 10-1-03; OMAP 39-2004(Temp), f. 6-14-04 cert. ef. 6-19-04 thru 11-30-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 5-2008, f. 2-28-08, cert. ef. 3-1-08; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-120-1280

### Billing

(1) A provider enrolled with the Division of Medical Assistance Programs (Division) must bill using the Department of Human Services (Department) assigned provider number, in addition to the National Provider Identification (NPI) number, if the NPI is available, pursuant to 407-120-0320.

(2) For Medicaid covered services the provider must not bill the Division more than the provider's usual charge (see definitions) or the reimbursement specified in the applicable Division Program rules:

(a) A provider enrolled with the Department or providing services to a client in a managed care plan under the Oregon Health Plan (OHP) must not seek payment for any services covered by Medicaid fee-for-service or through contracted managed care plans, except any coinsurance, co-payments, and deductibles expressly authorized by the General Rules Program administrative rules, OHP (Managed Care) Program administrative rules or individual Division Program administrative rules:

(A) A Division client for covered benefits; or

(B) A financially responsible relative or representative of that individual.

(b) Exceptions under which an enrolled provider may seek payment from an eligible client or client representative are described below:

(A) The provider may seek any applicable coinsurance, copayments and deductibles expressly authorized by Division rules in OAR chapter 410, division 120, OAR chapter 410, division 141, or any other individual Division Program rules;

(B) The client did not inform the provider of OHP eligibility, of OHP managed health plan enrollment, or of other third party insurance coverage, either at the time the service was provided or subsequent to the provision of the service or item, and as a result the provider could not bill the Division, the managed health care plan, or third party payer for any reason, including timeliness of claims, lack of prior authorization, etc. The provider must document attempts to obtain information on eligibility or enrollment;

(C) The client became eligible for Division benefits retroactively but did not meet other established criteria described in the General Rules Program rules and the appropriate Division Program rules (i.e., retroactive authorization);

(D) A third party resource made payments directly to the client for services provided;

(E) The client did not have full Division benefits. Clients receiving a limited Medicaid coverage, such as the Citizen Alien Waived Emergency Medical Program, may be billed for services that are not benefits of those programs. The provider must document pursuant to section (3) of this rule that the client was informed that the service or item would not be covered by the Division;

(F) The client has requested continuation of benefits during the administrative hearing process and final decision was not in favor of the client. The client will be responsible for any charges since the effective date of the initial notice of denial;

(G) A client cannot be billed for services or treatment that has been denied due to provider error (e.g., required documentation not submitted, prior authorization not obtained, etc.);

(H) The charge is for a copayment when a client is required to make a copayment as outlined in the Division's General Rules Program rule (410-120-1230) and individual Division Program rules;

(I) In exceptional circumstances, a client may request continuation of a covered service while asserting the right to privately pay for that service. Under this exceptional circumstance, a client can be billed for a covered service if the client is informed in advance of receiving the specific service of all of the following:

(i) That the requested service is a covered service and that the provider would be paid in full for the covered service if the claim is submitted to the Division or the client's managed care plan, if the client is a member of a managed care plan; and

(ii) The estimated cost of the covered service, including all related charges, the amount that the Division, or the client's managed care plan is required to pay for the service, and that the client cannot be billed for an amount greater than the maximum Division reimbursable rate or managed care plan rate, if the client is a member of a managed care plan; and

(iii) That the provider cannot require the client to enter into a voluntary payment agreement for any amount for the covered service; and

(iv) That the client knowingly and voluntarily agrees to pay for the covered service, the provider must not submit a claim for payment to the Division or the client's managed care plan; and

(v) The provider must be able to document in writing, signed by the client or the client's representative, that the client was provided the information described above; that the client was provided an opportunity to ask questions, obtain additional information and consult with the client's case-worker or client representative; and the client agreed to be responsible for payment by signing an agreement incorporating all of the information described above. The client must be given a copy of the signed agreement. A provider must not submit a claim for payment for covered services to the Division or to the client's managed care plan that is subject to such agreement.

(3) Non-covered Medicaid services:

(a) A provider may bill a client for services that are not covered by the Division or the managed care plan. However, the client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must be able to document in writing signed by the client or client's representative, that the client was provided this information and the client knowingly and voluntarily agreed to be responsible for payment;

(b) Services which are considered non-covered are listed in the following rules (in rule precedence order):

(A) OAR 410-141-0480, Benefit Package of Covered Services; and

(B) OAR 410-141-0520, Prioritized List of Health Services; and

(C) OAR 410-120-1200, Medical Assistance Benefits: Excluded services and limitations; and

(D) Applicable Division Program rules;

(c) A client cannot be billed for missed appointments. A missed appointment is not considered to be a distinct Medicaid service by the federal government and as such is not billable to the client or the Division.

(4) All claims must be billed on the appropriate form as described in the individual Division Program rules or submitted electronically in a manner authorized by the Department's Electronic Data Interchange (EDI) rules, OAR 410-001-0100 et. seq.

(5) Upon submission of a claim to the Division for payment, the provider agrees that it has complied with all Division Program rules. Submission of a claim, however, does not relieve the provider from the requirement of a signed provider agreement.

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(6) All billings must be for services provided within the provider's licensure or certification.

(7) It is the responsibility of the provider to submit true and accurate information when billing the Division. Use of a billing provider does not abrogate the performing provider's responsibility for the truth and accuracy of submitted information.

(8) A claim must not be submitted prior to delivery of service. A claim must not be submitted prior to dispensing, shipment or mailing of the item unless specified otherwise in the Division's individual Program rules.

(9) A claim is considered a valid claim only if all required data is entered on or attached to the claim form. See the appropriate provider rules and supplemental information for specific instructions and requirements. Also, see valid claim in the Definitions section of these rules.

(10) The HIPAA Codes rules, 45 CFR 162, apply to all Medicaid Code Set requirements, including the use of diagnostic or procedure codes for prior authorization, claims submissions and payments. Code Set has the meaning established in 45 CFR 162.100, and it includes the codes and the descriptors of the codes. These federal Code Set requirements are mandatory and the Division lacks any authority to delay or alter their application or effective dates as established by the U.S. Department of Health and Human Services.

(a) The Division will adhere to the national Code Set requirements in 45 CFR 162.1000 — 162.1011, regardless of whether a request is made verbally, or a claim is submitted on paper or electronically;

(b) Periodically, the Division will update its provider rules and tables to conform to national codes. In the event of an alleged variation between a Division-listed code and a national code, the Division will apply the national code in effect on the date of request or date of service and the provider, and the Division-listed code may be used for the limited purpose of describing the Division's intent in identifying the applicable national code;

(c) Only codes with limitations or requiring prior authorization are noted in rules. National Code Set issuance alone should not be construed as Division coverage, or a covered service.

(d) The Division adopts by reference the National Code Set revisions, deletions, and additions issued and published by the American Medical Association (Current Procedural Terminology — CPT) and on the CMS website (Healthcare Common Procedural Coding System — HCPCS) to be effective January 1, 2007. This code adoption should not be construed as Department coverage, or a covered service.

(11) Diagnosis code requirement:

(a) A primary diagnosis code is required on all claims, using the HIPAA nationally required diagnosis Code Set, unless specifically excluded in individual Division Program rules;

(b) When billing using ICD-9-CM codes, all diagnosis codes are required to the highest degree of specificity;

(c) Hospitals are always required to bill using the 5th digit, in accordance with methodology used in the Medicare Diagnosis Related Groups.

(12) For claims requiring a procedure code the provider must bill as instructed in the appropriate Division Program rules and must use the appropriate HIPAA procedure Code Set such as CPT, HCPCS, ICD-9-CM, ADA CDT, NDC, established according to 45 CFR 162.1000 to 162.1011, which best describes the specific service or item provided. For claims that require the listing of a diagnosis or procedure code as a condition of payment, the code listed on the claim form must be the code that most accurately describes the client's condition and the service(s) provided. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate individual Division Program rules. Hospitals must follow national coding guidelines:

(a) When there is no appropriate descriptive procedure code to bill the Division, the provider must use the code for "unlisted services." Instructions on the specific use of unlisted services are contained in the individual provider rules. A complete and accurate description of the specific care, item, or service must be documented on the claim;

(b) Where there is one CPT, CDT or HCPCS code that according to CPT, CDT and HCPCS coding guidelines or standards, describes an array of services the provider must bill the Division using that code rather than itemizing the services under multiple codes. Providers must not "unbundle" services in order to increase the Division payment.

(13) No provider or its contracted agency (including billing providers) shall submit or cause to be submitted to the Division:

(a) Any false claim for payment;

(b) Any claim altered in such a way as to result in a payment for a service that has already been paid;

(c) Any claim upon which payment has been made or is expected to be made by another source unless the amount paid or to be paid by the other party is clearly entered on the claim form;

(d) Any claim for furnishing specific care, item(s), or service(s) that have not been provided.

(14) The provider is required to submit an Individual Adjustment Request, or to refund the amount of the overpayment, on any claim where the provider identifies an overpayment made by the Division.

(15) A provider who, after having been previously warned in writing by the Division or the Department of Justice about improper billing practices, is found to have continued such improper billing practices and has had an opportunity for a contested case hearing, shall be liable to the Division for up to triple the amount of the Division established overpayment received as a result of such violation.

(16) Third party resources (TPR):

(a) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances the Division will be the payer of last resort;

(b) Providers must make reasonable efforts to obtain payment first from other resources. For the purposes of this rule "reasonable efforts" include, but are not limited to:

(A) Determining the existence of insurance or other resource by asking the recipient;

(B) Using an insurance database such as Electronic Verification System (EVS) available to the provider;

(C) Verifying the client's insurance coverage through the Automated Voice Response (AVR) or Secure provider web portal on each date of service and at the time of billing.

(c) Except as noted in (16)(d) (A through E), when third party coverage is known to the provider, as indicated through AVR, Secure provider web portal or any other means available, prior to billing the Division the provider must:

(A) Bill the TPR; and

(B) Except for pharmacy claims billed through the Division's point-of-sale system the provider must have waited 30 days from submission date of a clean claim and have not received payment from the third party; and

(C) Comply with the insurer's billing and authorization requirements; and

(D) Appeal a denied claim when the service is payable in whole or in part by an insurer.

(d) In accordance with federal regulations the provider must bill the TPR prior to billing the Division, except under the following circumstances:

(A) The covered health service is provided by an Intermediate Care Facility Services for the Mentally Retarded (ICF/MR);

(B) The covered health service is provided by institutional services for the mentally and emotionally disturbed;

(C) The covered health services are prenatal and preventive pediatric services;

(D) Services are covered by a third party insurer through an absent parent where the medical coverage is administratively or court ordered;

(E) When another party may be liable for an injury or illness (see definition of Liability Insurance), the provider may bill the insurer or liable party or place a lien against a settlement or the provider may bill the Division. The provider may not both place a lien against a settlement and bill the Division. The provider may withdraw the lien and bill Division within 12 months of the date of service. If the provider bills Division the provider must accept payment made by the Division as payment in full.

(F) The provider must not return the payment made by the Division in order to accept payment from a liability settlement or liability insurer or place a lien against that settlement:

(i) In the circumstances outlined in (16)(d)(A through E) above, the provider may choose to bill the primary insurance prior to billing the Division. Otherwise, the Division will process the claim and, if applicable, will pay the Division allowable rate for these services and seek reimbursement from the liable third party insurance plan;

(ii) In making the decision to bill the Division the provider should be cognizant of the possibility that the third party payer may reimburse the service at a higher rate than the Division, and that, once the Division makes payment no additional billing to the third party is permitted by the provider.

(e) The provider may bill the Division directly for services that are never covered by Medicare or another insurer on the appropriate form identified in the relevant provider rules. Documentation must be on file in the provider's records indicating this is a non-covered service for purposes of



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Third Party Resources. See the individual provider rules for further information on services that must be billed to Medicare first;

(f) Providers are required to submit an Individual Adjustment Request showing the amount of the third party payment or to refund the amount received from another source within 30 days of the date the payment is received. Failure to submit the Individual Adjustment Request within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame is considered concealment of material facts and grounds for recovery and/or sanction;

(A) When a provider receives a payment from any source prior to the submission of a claim to the Division, the amount of the payment must be shown as a credit on the claim in the appropriate field;

(B) Except as described in (15), any provider who accepts third party payment for furnishing a service or item to a Division client shall:

(i) Submit an Individual Adjustment Request after submitting a claim to the Division following instructions in the individual provider rules and supplemental billing information, indicating the amount of the third party payment; or

(ii) When the provider has already accepted payment from the Division for the specific service or item, the provider shall make direct payment of the amount of the third party payment to the Division. When the provider chooses to directly repay the amount of the third party payment to the Division, the provider must indicate the reason the payment is being made and must submit with the check:

(I) An Individual Adjustment Request which identifies the original claim, name and number of the client, date of service and item(s) or service(s) for which the repayment is made; or

(II) A copy of the Remittance Advice showing the original Division payment.

(g) The Division reserves the right to make a claim against any third party payer after making payment to the provider of service. The Division may pursue alternate resources following payment if it deems this a more efficient approach. Pursue alternate resources includes, but is not limited to, requesting the provider to bill the third party and to refund the Division in accordance with (15) of this rule;

(h) For services rendered to a Medicare and Medicaid dual eligible client, the Division may request the provider to submit a claim for Medicare payment and the provider must honor that request. Under federal regulation, a provider agrees not to charge a beneficiary (or the state as the beneficiary's subrogee) for services for which a provider failed to file a timely claim (42 CFR 424) with Medicare despite being requested to do so.

(i) If Medicare is the primary payer and Medicare denies payment, Medicare appeals must be timely pursued and Medicare denial must be obtained prior to submitting the claim for payment to Division. Medicare denial on the basis of failure to submit a timely appeal may result in the Division reducing from the amount of the claim any amount the Division determines could have been paid by Medicare.

(17) Full use of alternate resources:

(a) The Division will generally make payment only when other resources are not available for the client's medical needs. Full use must be made of reasonable alternate resources in the local community;

(b) Except as provided in subsection (18) of this rule, alternate resources may be available:

(A) Under a federal or state worker's compensation law or plan;

(B) For items or services furnished by reason of membership in a prepayment plan;

(C) For items or services provided or paid for directly or indirectly by a health insurance plan or as health benefits of a governmental entity, such as:

(i) Armed Forces Retirees and Dependents Act (CHAMPVA);

(ii) Armed Forces Active Duty and Dependents Military Medical Benefits Act (CHAMPUS); and

(iii) Medicare Parts A and B.

(D) To residents of another state under that state's Title XIX or state funded medical assistance programs; or

(E) Through other reasonably available resources.

(18) Exceptions:

(a) Indian Health Services or Tribal Health Facilities. Pursuant to 42 CFR 35.61 subpart G and the Memorandum of Agreement in OAR 310-146-0000, Indian Health Services facilities and tribal facilities operating under a section 638 agreement are payers of last resort, and are not considered an alternate resource or TPR;

(b) Veterans Administration. Veterans who are also eligible for Medicaid benefits are encouraged to utilize Veterans' Administration facil-

ities whenever possible. Veterans' benefits are prioritized for service related conditions and as such are not considered an alternate or TPR.

(19) **Table 120-1280**- TPR codes.

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

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050 & 409.110

Stats. Implemented: ORS 414.025, 414.065 & 414.085

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 5-1981, f. 1-23-81, ef. 3-1-81, Renumbered from 461-013-0050, 461-013-0060, 461-013-0090 & 461-013-0020; AFS 47-1982, f. 4-30-82, & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 42-1983, f. 9-2-83, ef. 10-1-83; AFS 45-1983, f. 9-19-83, ef. 10-1-83; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 24-1985, f. 4-24-85, cert. ef. 6-1-85; AFS 33-1986, f. 4-11-86, ef. 6-1-86; AFS 43-1986, f. 6-13-86, ef. 7-1-86; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 14-1987, f. 5-31-87, ef. 4-1-87; AFS 38-1988, f. 5-17-88, cert. ef. 6-1-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0140, 461-013-0150, 461-013-0175 & 461-013-0180; HR 19-1990, f. & cert. ef. 7-9-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0260, 410-120-0280, 410-120-0300 & 410-120-0320; HR 31-1994, f. & cert. ef. 11-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-10-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 30-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2002, f. 6-14-02 cert. ef. 8-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 67-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-120-1295

### Non-Participating Provider

(1) For purposes of this rule, a provider enrolled with the Division of Medical Assistance Programs (Division) that does not have a contract with a Division-contracted Prepaid Health Plan (PHP) is referred to as a non-participating provider.

(2) For covered services that are subject to reimbursement from the PHP, a non-participating provider, other than a hospital governed by (3) below, must accept from the Division-contracted PHP, as payment in full, the amount that the provider would be paid from the Division if the client was fee-for-service (FFS).

(3) For covered services provided on and after October 1, 2009, the Division-contracted Fully Capitated Health Plan (FCHP) that does not have a contract with a hospital, is required to reimburse, and hospitals are required to accept as payment in full, the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727);

(b) Using a Medicare payment methodology the FCHP will reimburse inpatient and outpatient services in all other non-participating hospitals, not designated as a rural access or Type A and Type B hospital, at a rate no less than a percentage of the Medicare reimbursement rate. The percentage of the Medicare reimbursement shall be equal to two percentage points less than the percentage of Medicare costs used by the Department in calculating the base hospital capitation payment to FCHP's, excluding any supplemental payments.

(4) The percentage of Medicare costs used by the Department in calculating the base hospital capitation payment to the FCHP are calculated by the Department's actuarial unit. The FCHP Non-Contracted DRG Hospital Reimbursement Rates dated October 1, 2009 are on the Department's Web site at: [www.dhs.state.or.us/policy/healthplan/guides/ohp/main.html](http://www.dhs.state.or.us/policy/healthplan/guides/ohp/main.html), archived data is available on request from the Division.

(5) A non-participating hospital must notify the FCHP within 2 business days of an FCHP patient admission when the FCHP is the primary payer. Failure to notify does not, in and of itself, result in denial for payment. The FCHP is required to review the hospital claim for:

(a) Medical appropriateness;

(b) Compliance with emergency admission or prior authorization policies;

(c) Member's benefit package;

(d) The FCHP contract and the Division's administrative rules.

(6) After notification from the non-participating hospital, the FCHP may:

(a) Arrange for a transfer to a contracted facility, if the patient is medically stable and the FCHP has secured another facility to accept the patient;

(b) Perform concurrent review; and/or

(c) Perform case management activities.

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(7) In the event of a disagreement between the FCHP and hospital, the provider may appeal the decision by asking for an administrative review as specified in OAR 410-120-1580.

Stat. Auth.: ORS 409.040, 409.050& 414.065

Stats. Implemented: ORS 414.025, 414.065, 414.705 & 414.743

Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05; OMAP 33-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 35-2005, f. 7-21-05, cert. ef. 7-22-05; OMAP 49-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-15-06; OMAP 63-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 66-2005(Temp), f. 12-13-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 72-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 28-2006, f. 6-22-06, cert. ef. 6-23-06; OMAP 42-2006(Temp), f. 12-15-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 2-2007, f. & cert. ef. 4-5-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 28-2009(Temp), f. 9-11-09, cert. ef. 10-1-09 thru 3-25-10; DMAP 35-2009(Temp), f. & cert. ef. 12-4-09 thru 3-25-10; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 4-2010, f. & cert. ef. 3-26-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-120-1340

### Payment

(1) The Division of Medical Assistance Programs (Division) will make payment only to the enrolled provider who actually performs the service or to the provider's enrolled billing provider for covered services rendered to eligible clients. Any contracted billing agent or billing service submitting claims on behalf of a provider but not receiving payment in the name of or on behalf of the provider does not meet the requirements for Billing provider enrollment. If electronic transactions will be submitted, billing agents and billing services must register and comply with Department of Human Services (Department) Electronic Data Interchange (EDI) rules, OAR 407-120-0100 through 407-120-0200. The Division may require that payment for services be made only after review by the Division.

(2) The Department office that is administering the program under which the billed services or items are provided sets Fee-for-service (FFS) payment rates.

(3) All FFS payment rates are the rates in effect on the date of service that are the lesser of the amount billed, the Division maximum allowable amount or the reimbursement specified in the individual program provider rules:

(a) Amount billed may not exceed the provider's "usual charge" (see definitions);

(b) The Division's maximum allowable rate setting process uses the following methodology. The rates are updated periodically and posted on the Department web site at [http://www.oregon.gov/Department/healthplan/data\\_pubs/feeschedule/main.shtml](http://www.oregon.gov/Department/healthplan/data_pubs/feeschedule/main.shtml):

(A) For all CPT/HCPCS codes assigned a Relative Value Unit (RVU) weight and reflecting services not typically performed in a facility, the Division will convert to the 2010 Transitional Non-Facility Total RVU weights published in the Federal Register, Vol. 74, November 25, 2009 with technical corrections published Dec. 10, 2009, to be effective for dates of services beginning January 1, 2011. For CPT/HCPCS codes for professional services typically performed in a facility the Transitional Facility RVU weight Totals will be adopted:

(i) The conversion factor for labor and delivery (59400-59622) is \$41.61;

(ii) CPT codes 92340-92342 and 92352-92353 remain at a flat rate of \$26.81;

(iii) All remaining RVU weight based CPT/HCPCS codes have a conversion factor of \$27.82;

(B) Surgical assist reimburses at 20% of the surgical rate;

(C) The base rate for anesthesia services 00100-01996 is \$24.19 and is based on per unit of service;

(D) Clinical lab codes are priced based upon the Centers for Medicare and Medicaid Service (CMS) mandates. Other Non-RVU weight based Lab vary by code are generally between 62% to 97% of Medicare's rates;

(E) All approved Ambulatory Surgical Center (ASC) procedures are reimbursed at 80% of Medicare's fee schedule;

(F) Physician administered drugs, billed under a HCPCS code, are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed the rate will be based upon the Wholesale Acquisition Price (WAC) plus 6.25%. If no WAC is available, then the rate will be reimbursed at Acquisition Cost. Pricing information for WAC is provided by First Data Bank. These rates may change periodically based on drug costs;

(G) All procedures used for vision materials and supplies are based on contracted rates which include acquisition cost plus shipping and handling;

(c) Individual provider rules may specify reimbursement rates for particular services or items.

(4) The Division reimburses inpatient hospital service under the DRG methodology, unless specified otherwise in the Division's Hospital Services

Program administrative rules (chapter 410, division 125). Reimbursement for services, including claims paid at DRG rates, will not exceed any upper limits established by federal regulation.

(5) Department reimburses all out-of-state hospital services at Oregon DRG or fee-for-service rates as published in the Hospital Services Program rules (OAR chapter 410, division 125) unless the hospital has a contract or service agreement with the Division to provide highly specialized services.

(6) Payment rates for in-home services provided through Department Seniors and People with Disabilities Division (SPD) will not be greater than the current Division rate for nursing facility payment.

(7) Department sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities, psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) The rate established by SPD for out-of-state nursing facilities.

(8) The Division will not make payment on claims that have been assigned, sold, or otherwise transferred or when the billing provider, billing agent or billing service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

(9) The Division will not make a separate payment or copayment to a nursing facility or other provider for services included in the nursing facility's all-inclusive rate. The following services are not included in the all-inclusive rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services Program administrative rules (chapter 410, division 121) and Home Enteral/Parenteral Nutrition and IV Services Program administrative rules, (chapter 410, division 148);

(b) Physical therapy, speech therapy, and occupational therapy provided by a non-employee of the nursing facility within the appropriate program administrative rules, (chapter 410, division 131 and 129);

(c) Continuous oxygen which exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program administrative rules, (chapter 410, division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services Program administrative rules, (chapter 410, division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services Program administrative rules, (chapter 410, division 130);

(f) Medical services provided by physician or other provider of medical services, such as radiology and laboratory, as outlined in the Medical-Surgical Services Program rules, (chapter 410, division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies Program administrative rules, (chapter 410, division 122).

(10) The Division reimburses hospice services based on CMS Core-Based Statistical Areas (CBSA's). A separate payment will not be made for services included in the core package of services as outlined in OAR chapter 410, division 142.

(11) Payment for Division clients with Medicare and full Medicaid:

(a) The Division limits payment to the Medicaid allowed amount less the Medicare payment up to the Medicare co-insurance and deductible, whichever is less. The Division's payment cannot exceed the co-insurance and deductible amounts due;

(b) The Division pays the Division allowable rate for Division covered services that are not covered by Medicare.

(12) For clients with third-party resources (TPR), the Division pays the Division allowed rate less the TPR payment but not to exceed the billed amount.

(13) The Division payments, including contracted Prepaid Health Plan (PHP) payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For the Division, such payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding Division allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the individual provider rules.

# ADMINISTRATIVE RULES

(14) Payment by the Division does not limit the Department or any state or federal oversight entity from reviewing or auditing a claim before or after the payment. Payment may be denied or subject to recovery if medical review, audit or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care, or medical appropriateness of the care or payment.

Stat. Auth.: ORS 409.040 & 409.050

Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.705, 414.727, 414.728, 414.742, 414.743

Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061; PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 35-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11

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**Rule Caption:** PDL Expansion, Ingredient Cost and Dispensing Fee Reimbursement Methodology Changes, PA Criteria Updates, and Clozapine Monitoring Reimbursement Elimination.

**Adm. Order No.:** DMAP 40-2010

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 410-121-0000, 410-121-0030, 410-121-0040, 410-121-0149, 410-121-0155, 410-121-0160

**Rules Repealed:** 410-121-0320

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

The Division amended as follows:

- 410-121-0000: Revised definition of "Actual Acquisition Cost" (AAC) and addition of definitions for Average Actual Acquisition Cost (AAAC), and "Wholesale Acquisition Cost."

- 410-121-0030: Semi-annual update to current Preferred Drug List (PDL) classes and addition of 42 newly reviewed drug classes by the Health Resources Commission.

- 410-121-0040: Discontinuation of publication of Drugs requiring Prior Authorization (PA) in rule and future publication of all PA information in the Division's online PA Approval Criteria Guide. PA criteria changes related to Asthma Controllers-LABA/ICS Inhalers and Low Dose Quetiapine.

- 410-121-0149: Name update of Medicare's new Point of Sale (POS) enrollee verification contractor.

- 410-121-0155: Change in reimbursement methodology from discounted percentages off of Average Wholesale Price (AWP) to an Average Actual Acquisition Cost (AAAC) based reimbursement system and participatory requirements for Actual Acquisition Cost surveys as basis for reimbursement.

- 410-121-0160: Adoption of a tiered based dispensing fee structure based on annual claims volume of enrolled pharmacy providers in conjunction with proposed changes to 410-121-0155.

- 410-121-0320: REPEAL; Rule will no longer be needed after implementation of new reimbursement methodology under 410-121-0155

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

Proposed Revisions that the Division will not make permanent:

410-121-0000 and 410-121-0160: The Division will not proceed with the proposed revisions to add a definition to 410-121-0000 for

Clinical Access Pharmacy (CAP) and add text in 410-121-0160 stating the Division shall pay designated CAPs \$15.00 for professional dispensing fees.

410-121-0155: The Division will not proceed with the proposed revision in cases where no AAAC is available, reimburse at a rate of Wholesale Acquisition Cost (WAC) + 6.25%.

410-121-0190: The Division will not repeal this rule and clozapine monitoring reimbursement will not be eliminated at this time.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-121-0000

### Foreword and Definition of Terms

(1) The Division of Medical Assistance Program's (Division) Oregon Administrative Rules (OAR) are designed to assist providers in preparing claims for services provided to the Division's fee-for-service clients. Providers must use Pharmaceutical OARs in conjunction with the General Rules OARs (chapter 410, division 120) for Oregon Medical Assistance Programs.

(2) Pharmaceutical services delivered through managed care plans contracted with the Division, under the Oregon Health Plan (OHP), are subject to the policies and procedures established in the OHP administrative rules (chapter 410, division 141) and by the specific managed health care plans.

(3) Definition of Terms:

(a) Actual Acquisition Cost (AAC): The cost or basis for reimbursement of supplies. The AAC will be established by the Division or its contractor by rolling surveys of enrolled pharmacies to verify the actual invoice amount paid by the pharmacy or corporate entity to wholesalers, manufacturers, or distribution centers for the product and as such will serve as the basis for reimbursement;

(b) Average Actual Acquisition Cost (AAAC): The AAAC will be the average of AAC invoice amounts for individual drug products based on the Generic Sequence Number (GSN);

(c) Average Manufacturer's Price (AMP): The average price that manufacturers sell medication to wholesalers and retail pharmacies, as further clarified in 42 CFR 447;

(d) Average Net Price: The average of net price (definition below) of all drugs in an identified Preferred Drug List (PDL) (definition below) class or group;

(e) Bulk Dispensing: Multiple doses of medication packaged in one container labeled as required by pertinent Federal and State laws and rules;

(f) Centers for Medicare and Medicaid Services (CMS) Basic Rebate: The quarterly payment by the manufacturer of a drug pursuant to the Manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with Section 1927(c)(3) of the Social Security act 42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8 (c)(3). See 410-121-0157;

(g) CMS CPI Rebate: The quarterly payment by the manufacturer pursuant to the Manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with Section 1927(c)(2) of the Social Security act (42 U.S.C. 1396r-8(c)(2));

(h) Community Based Care Living Facility: For the purposes of the Division's Pharmacy Program, a home, facility, or supervised living environment licensed or certified by the state of Oregon that provides 24 hour care, supervision, and assistance with medication administration. These include, but are not limited to:

(A) Supportive Living Facilities;

(B) 24-Hour Residential Services;

(C) Adult Foster Care;

(D) Semi-Independent Living Programs;

(E) Assisted Living and Residential Care Facilities;

(F) Group Homes and other residential services for people with developmental disabilities or needing mental health treatment; and

(G) Inpatient hospice;

(i) Compounded Prescription:

(A) A prescription that is prepared at the time of dispensing and involves the weighting of at least one solid ingredient that must be a reimbursable item or a legend drug in a therapeutic amount;

(B) Compounded prescription is further defined to include the Oregon Board of Pharmacy definition of compounding (see OAR 855-006-0005);

(j) Dispensing: Issuance of a prescribed quantity of an individual drug entity by a licensed pharmacist;

(k) Drug Order/Prescription:

(A) A medical practitioner's written or verbal instructions for a patient's medications; or



# ADMINISTRATIVE RULES

(B) A medical practitioner's written order on a medical chart for a client in a nursing facility;

(l) Durable Medical Equipment and supplies (DME): Equipment and supplies as defined in OAR 410-122-0010, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

(m) Estimated Acquisition Cost (EAC): The estimated cost that the pharmacy can obtain the product listed in OAR 410-121-0155;

(n) Intermediate Care Facility: A facility providing regular health-related care and services to individuals at a level above room and board, but less than hospital or skilled nursing levels as defined in ORS 442.015;

(o) Legend Drug: A drug limited by § 503(b)(1) of the Federal Food, Drug, and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:

(A) Habit-forming;

(B) Toxic or having potential for harm; or

(C) Limited in its use to use under a practitioner's supervision by the new drug application for the drug;

(i) The product label of a legend drug is required to contain the statement: "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT A PRESCRIPTION.";

(ii) A legend drug includes prescription drugs subject to the requirement of § 503(b)(1) of the federal Food, Drug, and Cosmetic Act which shall be exempt from § 502(F)(1) if certain specified conditions are met;

(p) Long Term Care Facility: Includes skilled nursing facilities and intermediate care facilities with the exclusions found in ORS 443.400 to 443.455;

(q) Maintenance Medication: Drugs that have a common indication for treatment of a chronic disease and the therapeutic duration is expected to exceed one year. This is determined by a First DataBank drug code maintenance indicator of "Y" or "1";

(r) Mental Health Drug: A type of legend drug defined by the Department by rule that includes, but is not limited to those drugs classified by First DataBank in the following Standard Therapeutic Classes:

(A) Therapeutic Class 7 ataractics-tranquilizers; and Therapeutic Class 11 psychostimulants-antidepressants;

(B) Depakote, Lamictal and their generic equivalents and other drugs that the Division specifically carved out from capitation from Fully Capitated Health Plans (FCHPs) in accordance with sections (8) through (11) of OAR 410-141-0070;

(s) Narrow Therapeutic Index (NTI) Drug: A drug that has a narrow range in blood concentrations between efficacy and toxicity and requires therapeutic drug concentration or pharmacodynamic monitoring;

(t) Net Price: The amount a drug costs the Division and is calculated using the following formula: "Estimated Acquisition Cost minus CMS Basic Rebate minus CMS CPI Rebate minus State Supplemental Rebate";

(u) Non-Preferred Products: Any medication in a class that has been evaluated and that is not listed on the Practitioner-Managed Prescription Drug Plan Preferred Drug List in OAR 410-121-0030 and may be subject to co-pays;

(v) Nursing Facility: An establishment that is licensed and certified by the Department's Seniors and People with Disabilities Division (SPD) as a Nursing Facility;

(w) Physical Health Drug: All other drugs not included in section (r) of this rule;

(x) Point-of-Sale (POS): A computerized, claims submission process for retail pharmacies that provides on-line, real-time claims adjudication;

(y) Preferred Drug List (PDL): A 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. (See details for the Division's PMPDP PDL in OAR 410-121-0030);

(A) Enforceable Physical Health Preferred Drug List: The list of drug products used to treat physical health diagnosis that the Division has identified which shall be exempt from client co-pays and may be subject to prior authorization (PA). Drugs prescribed that do not appear on the PDL (non-preferred products) shall be subject to both co-pays and PA as determined to be appropriate by the Division;

(B) Voluntary Mental Health Preferred Drug List: The list of drug products used to treat mental health diagnosis. These drugs are exempt from client co-pay. Any drug prescribed for the treatment of mental health diagnosis shall be exempt from PA requirements by the Division;

(z) Preferred Products: Products in classes that have been evaluated and placed on the PMPDP PDL in OAR 410-121-0030 and are not subject to co-pays;

(aa) Prescription Splitting: Any one or a combination of the following actions:

(A) Reducing the quantity of a drug prescribed by a licensed practitioner for prescriptions not greater than 34 days (see OAR 410-121-0146);

(B) Billing the agency for more than one dispensing fee when the prescription calls for one dispensing fee for the quantity billed;

(C) Separating the ingredients of a prescribed drug and billing the agency for separate individual ingredients, with the exception of compounded medications (see OAR 410-121-0146); or

(D) Using multiple 30-day cards to dispense a prescription when a lesser number of cards will suffice;

(bb) Prior Authorization Program (PA): The Prior Authorization Program is a system of determining, through a series of therapeutic and clinical protocols, which drugs require authorizations prior to dispensing:

(A) OAR 410-121-0040 lists the drugs or categories of drugs requiring PA;

(B) The practitioner, or practitioner's licensed medical personnel listed in OAR 410-121-0060, may request a PA;

(cc) State Supplemental Rebates: The Division and CMS approved discounts paid by manufacturers per unit of drug. These rebates are authorized by the Social Security Act section 42 USC 1396r-8(a)(1) and are in addition to federal rebates mandated by the Omnibus Budget Reconciliation Act (OBRA 90) and the federal rebate program;

(dd) Unit Dose: A sealed, single unit container of medication, so designed that the contents are administered to the patient as a single dose, direct from the container, and dispensed following the rules for unit dose dispensing system established by the Oregon Board of Pharmacy;

(ee) Urgent Medical Condition: A medical condition that arises suddenly, is not life-threatening, and requires prompt treatment to avoid the development of more serious medical problems;

(ff) Usual and Customary Price: The amount an individual without prescription drug coverage would pay at a retail pharmacy. The usual and customary price may also be referred to as the retail price;

(gg) Wholesale Acquisition Cost (WAC): The price paid by a wholesaler for drugs purchased from the wholesaler's supplier, typically the manufacturer of the drug. WAC is the price of a covered product by the National Drug Code (NDC) as published by First DataBank, MediSpan or Red Book;

(hh) 340B Pharmacy: A federally designated community health center or other federally qualified covered entity that is listed on the Health Resources and Services Administration (HRSA) website.

[ED NOTE: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110, 414.065 & 414.325  
Stats. Implemented: ORS 414.065

Hist.: HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 1-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11

## 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.

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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](http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/rulebooks/CRB121rb101810p.pdf)

(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 drugs 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**

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

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110, 414.065, 414.334

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. 1-1-11

## 410-121-0040

### Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by Oregon Health Plan (OHP) in a manner consistent with the Oregon Health Services Commission's Prioritized List of Health Services Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication shall not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited;

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these pharmacy provider rules, including PA requirements imposed in this rule.

(3) The Department of Human Services (Department) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs that the Department requires PA for this purpose are found in the OHP Fee-For-Service Pharmacy PA Criteria Guide (Pharmacy PA Criteria Guide) dated Jan. 1, 2011, incorporated in rule by reference and found on our Web page at: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/clinical.html>.

(4) The Department may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Drug Use Review (DUR) Board and adopted by the Department in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which the Department requires PA for this purpose are found in the Pharmacy PA Criteria Guide.

(5) New drugs shall be evaluated when added to the weekly upload of the First DataBank drug file:

(a) If the new drug is in a class where current PA criteria applies, all associated PA criteria shall be required at time of the drug file load;

(b) If the new drug is indicated for a condition below the funding line on the Prioritized List of Health Services, PA shall be required to ensure that the drug is prescribed for a condition funded by OHP;

(c) PA criteria for all new drugs shall be reviewed at the next quarterly DUR Board meeting.

(6) PA is required for brand name drugs that have two or more generically equivalent products available and that are NOT determined Narrow Therapeutic Index drugs by the Oregon DUR Board:

(a) Immunosuppressant drugs used in connection with an organ transplant must be evaluated for narrow therapeutic index within 180 days after United States patent expiration;

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant must notify the department of patent expiration within 30 days of patent expiration for (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria;

(B) If (6)(A) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated, and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(7) PA is required for non-preferred Preferred Drug List (PDL) products in a class evaluated for the PDL except in the following cases:

(a) The drug is a mental health drug as defined in OAR 410-121-0000;

(b) The original prescription is written prior to 1/1/10;

(c) The prescription is a refill for the treatment of seizures, cancer, HIV or AIDS; or

(d) The prescription is a refill of an immunosuppressant.

(8) PA may not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Department;

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP or;

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug Plan under ORS 414.334.

Stat. Auth.: ORS 409.050, 409.110, 414.065, 414.334

Stats. Implemented: ORS 414.065

# ADMINISTRATIVE RULES

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03, cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03, cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03, cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04, cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-121-0149

### Medicaid Temporary Prescription Drug Assistance for Fully Dual Eligible Medicare Part D Clients

(1) This rule is a solution implemented because many pharmacies are not able to verify that the fully dual eligible client is enrolled in one of the federal Medicare prescription drug plans or that the client is eligible for low-income subsidy assistance. The Division shall continue to work with the federal Medicare program to resolve these implementation issues with Part D coverage.

(2) Effective January 14, 2006, for the purposes described in subsection (1), enrolled pharmacies may send the Division claims for Part D drugs and cost-sharing obligations of clients who have both Medicare and Medicaid coverage (fully dual eligible clients) if:

(a) The drug(s) was covered by the Division for fully dual eligible clients prior to January 1, 2006; and

(b) The pharmacy has attempted to bill Medicare's Part D system but cannot resolve the claim by:

(A) Continuing to bill the Medicare Part D plan as the primary payer identified through an E-1 query;

(B) Trying to resolve the issue with the Medicare Part D plan directly;

(C) Billing Medicare's Point-of-Sale Solution.

(3) If all the criteria in subsection (2) are met, then the Division shall consider paying the claim or a portion of the claim, as follows:

(a) The pharmacy must contact the Department's Medicare Hotline at 1-877-585-0007 to obtain authorization for claim submission;

(b) The fully dual eligible client is responsible for paying the appropriate Medicare copayment;

(c) The Division's payment authorization shall be limited to not greater than a one-month supply; and

(d) The Division's reimbursement amount shall be limited to the amount the Part D drug plan would have paid, had the Part D drug plan adjudicated the claim first, or the amount the Division would pay for Medicaid clients who are not also Medicare beneficiaries.

(4) This rule supersedes all other rules relating to the limitations and exclusions of drug coverage for clients with Medicare Part D.

Stat. Auth. ORS 409.010, 409.050 & 414.329  
Statutes Implemented: ORS 414.065

Hist.: OMAP 1-2006(Temp), f. & cert. ef. 1-18-06 thru 6-29-06; OMAP 29-2006, f. 6-22-06, cert. ef. 6-29-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-121-0155

### Reimbursement

(1) The Division shall pay the lesser of the provider's usual charge to the general public for a drug or the estimated acquisition cost (EAC) plus a dispensing fee. The EAC is defined by the Division as the lesser of:

(a) The Average Actual Acquisition Cost (AAAC) of the drug;

(b) In cases where no AAAC is available, the Division will reimburse at Wholesale Acquisition Cost (WAC);

(c) The Federally Mandated Upper Limit (FUL) for certain multiple source drugs as established and published by CMS;

(d) 340B covered entities and federally qualified health centers or their contracted agents that fill Medicaid patient prescriptions with drugs purchased at the prices authorized under Section 340B of the Public Health Service Act must bill Medicaid for the actual acquisition cost.

(2) The Division shall revise its EAC file weekly. Pharmacies must make available to the Division, or its contractor, any information necessary to determine the pharmacy's actual acquisition cost of drug products dispensed to the Division's clients.

(3) The AAAC shall serve as the basis for reimbursement. Individual pharmacies are required to participate in an AAC survey conducted by the

Division, or its contractor, not more than one time per every 18 to 24-month period. Pharmacies that do not respond to AAC survey requests may be subject to disenrollment as providers for the Oregon Health Plan.

(4) If a provider is unable to purchase a particular drug product at the AAAC the provider shall report this to the Division or its contractor for further review through a dispute resolution process. Providers may submit inquiries via telephone, facsimile, via electronic mail, or the contractor's secure web site: <http://or.mslc.com/RequestRateReview.aspx>

(a) The Division or its contractor will respond to all inquiries or complaints with 24 hours and resolve the issue within 5 business days;

(b) The pricing dispute resolution process shall include the Division or its contractor verifying the accuracy of pricing to ensure consistency with marketplace pricing and drug availability;

(c) Price adjustments shall be made during the next weekly pricing update.

(5) Payment for covered fee-for-service drug products will be the lesser of the billed amount or the EAC of the generic form, minus applicable copayments, plus a professional dispensing fee.

(6) Payment for trade name forms of multiple source products:

(a) Shall be the EAC of the trade name form, minus applicable copayments, plus a professional dispensing fee;

(b) The Division shall only pay if the prescribing practitioner has received a prior authorization for the trade name drug.

(7) No professional dispensing fee is allowed for dispensing pill splitters/cutters.

(8) Payment for pill splitters/cutters with a National Drug Code (NDC) number shall be the lesser of the billed amount or the EAC, and:

(a) A practitioner prescription is not required;

(b) The Division shall only pay for one pill splitter/cutter per client in a twelve-month period.

Stat. Auth.: ORS 184.750, 184.770, 409.050 & 414.065  
Stats. Implemented: ORS 414.065

Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 846(Temp), f. & ef. 7-1-77; PWC 858, f. 10-14-77, ef. 11-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 15-1979(Temp), f. 6-29-79, ef. 7-1-79; AFS 41-1979, f. & ef. 11-1-79; AFS 15-1981, f. 3-5-81, ef. 4-1-81; AFS 35-1981(Temp), f. 6-26-81, ef. 7-1-81; AFS 53-1981(Temp), f. & ef. 8-14-81; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices. AFS 74-1982 (Temp), f. 7-22-81, ef. 8-1-82; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 113-1982(Temp), f. 12-28-82, ef. 1-1-83; AFS 13-1983, f. & ef. 3-21-83; AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 18-1984, f. 4-23-84, ef. 5-1-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 42-1986(Temp), f. 6-10-86, ef. 7-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0100; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0250; HR 20-1991, f. & cert. ef. 4-16-91; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 32-2002, f. & cert. ef. 8-1-02; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 18-2004, f. 3-15-04, cert. ef. 4-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 5-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 14-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-121-0160

### Dispensing Fees

(1) Effective January 1, 2011 professional dispensing fees allowable for services shall be based on an individual pharmacy's annual claims volume as follows:

(a) Less than 49,999 claims a year = \$14.01;

(b) Between 50,000 and 69,999 claims per year = \$10.14;

(c) 70,000 or more claims per year = \$9.68;

(2) All Division enrolled pharmacies shall be required to complete an annual survey that collects claim volumes from enrolled pharmacies and other information from the previous 12 month period to determine the appropriate dispensing fee reimbursement:

(a) Claims volume shall be stated by total OHP covered prescriptions and claims from all payer types;

(b) Survey activities shall be conducted by either the Division or its contractor and must be completed and returned by pharmacies within 14 days of receipt;

(c) Complete surveys must be signed with a letter of attestation by:

(A) The store owner or majority owner for independent pharmacies;

(B) The Pharmacy manager and the store manager or a corporate officer for chain pharmacies.

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

Stat. Auth.: ORS 184.750, 184.770, 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 41-1984(Temp), f. 9-24-84, ef. 10-1-84; AFS 1-1985, f. & ef. 1-3-85; AFS 54-1985(Temp), f. 9-23-85, ef. 10-1-85; AFS 66-1985, f. 11-5-85, ef. 12-1-85; AFS 13-



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1986(Temp), f. 2-5-86, ef. 3-1-86; AFS 36-1986, f. 4-15-86, ef. 6-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 28-1987(Temp), f. & ef. 7-14-87; AFS 50-1987, f. 10-20-87, ef. 11-1-87; AFS 41-1988(Temp), f. 6-13-88, cert. ef. 7-1-88; AFS 64-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0101; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 20-1990, f. & cert. ef. 7-9-90, Renumbered from 461-016-0260; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 21-1993(Temp), f. & cert. ef. 9-1-93; HR 12-1994, f. 2-25-94, cert. ef. 2-27-94; OMAP 5-1998(Temp), f. & cert. ef. 2-11-98 thru 7-15-98; OMAP 22-1998, f. & cert. ef. 7-15-98; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 50-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 60-2001, f. & cert. ef. 12-11-01; OMAP 32-2003(Temp), f. & cert. ef. 4-15-03 thru 9-15-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04; OMAP 19-2004(Temp), f. & cert. ef. 3-15-04 thru 4-14-04; OMAP 21-2004, f. 3-15-04, cert. ef. 4-15-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11

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**Rule Caption:** TCM Asthma Healthy Homes Program; consolidate similar rules; remove procedural information and processes; define certain acronyms.

**Adm. Order No.:** DMAP 41-2010

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 410-138-0000, 410-138-0005, 410-138-0007, 410-138-0009, 410-138-0020, 410-138-0040, 410-138-0060, 410-138-0080, 410-138-0390, 410-138-0420

**Rules Repealed:** 410-138-0300, 410-138-0360, 410-138-0380, 410-138-0400, 410-138-0440, 410-138-0460, 410-138-0500, 410-138-0540, 410-138-0560, 410-138-0600, 410-138-0640, 410-138-0660, 410-138-0680, 410-138-0700, 410-138-0710, 410-138-0740, 410-138-0760, 410-138-0780

**Subject:** The Targeted Case Management (TCM) Services Program administrative rules govern Division of Medical Assistance Programs' (Division) payments for services provided to certain targeted client groups. Per Center for Medicare and Medicaid Services (CMS) approval to adopt the TCM Asthma Healthy Homes Program (SPA 10-2), the Division:

- Amended rules listed above to include the TCM Asthma Health Home Program;

- Consolidated the following rules with similar language: 410-138-0005, 410-138-0020, 410-138-0060, 410-138-0080, 410-138-0390 and 410-138-0420; and

- Repealed rules listed above to streamline and clarify language, remove procedural and process information and define certain acronyms

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

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-138-0000

### Targeted Case Management Definitions

The following definitions apply to OAR 410-138-0000 through 410-138-0420:

(1) **Assessment** – The act of gathering information and reviewing historical and existing records of an eligible client in a target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager shall gather information from family members, medical providers, social workers, and educators, if necessary.

(2) **Care Plan** – A TCM Care Plan is a multidisciplinary plan that contains a set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(3) **Case Management** – Services furnished by a case manager to assist individuals eligible under the Medicaid State plan in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18. See also definition for Targeted Case Management.

(4) **Centers for Medicare and Medicaid Services (CMS)** – The Federal agency under the U.S. Department of Health and Human Services that provides the Federal funding for Medicaid and Children's Health Insurance Program (CHIP). The agency was formerly called the Health Care Financing Administration (HCFA).

(5) **Department** – Department of Human Services (Department).

(6) **Division** – Division of Medical Assistance Programs

(7) **Duplicate payments** – Payments are considered "duplicate" if more than one payment is made for the same services to meet the same need for the same client at the same point in time.

(8) **Early intervention (EI)** – Services for preschool children with disabilities from birth until three years of age, including children who are homeless and their families.

(9) **Early childhood special education (ECSE)** – Free, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for public school, including instruction in physical education, speech-language services, travel training, and orientation and mobility services. Instruction is provided in any of the following settings: home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings.

(10) **Early Intervention/Early Childhood Special Education (EI/ECSE) services** – Services provided to a preschool child with disabilities, eligible under the Individuals with Disabilities Education Act (IDEA), from birth until they are eligible to attend public school, pursuant to the eligible child's Individualized Family Service Plan (IFSP).

(11) **EI/ECSE Case manager (i.e., service coordinator)** – An employee of the EI/ECSE contracting or subcontracting agency meeting the personnel standards requirements in OAR 581-015-2900. The EI/ECSE case manager serves as a single point-of-contact and is responsible for coordinating all services across agency lines for the purpose of assisting an eligible client to obtain needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) identified in the eligible client's care plan in coordination with the client's IFSP.

(12) **EI/ECSE Targeted Case Management program** – as a service under the State plan, includes case management services furnished to eligible EI/ECSE preschool children age 0-5 with disabilities, assisting them to gain access to needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) in coordination with their IFSP. EI/ECSE TCM providers must meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2710 EI/ECSE; and must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or be sub-contractors with such a contractor. Medicaid reimbursement for EI/ECSE TCM services is available only to eligible clients in the target group and does not restrict an eligible client's free choice of providers.

(13) **Eligible client** – An individual who is deemed eligible for Medicaid or the Children's Health Insurance Program (CHIP) by the Department and eligible for case management services (including TCM services) as defined in the Medicaid State plan, at the time the services are furnished. TCM services are allowable only for clients who are categorically eligible. The Medicaid State Plan does not allow TCM services for clients who are covered under the Medicaid standard benefit package.

(14) **Federal Financial Participation (FFP)** – The portion paid by the federal government to states for their share of expenditures for providing Medicaid services. FFP was created as part of the Title XIX, Social Security Act of 1965. There are two objectives that permit claims under FFP. They are:

(a) To assist individuals eligible for Medicaid to enroll in the Medicaid program; and

(b) To assist individuals on Medicaid to access Medicaid providers and services. The second objective involves TCM.

(15) **Federal Medical Assistance Percentage (FMAP)** – The percentage of federal matching dollars available to a state to provide Medicaid services. The FMAP is calculated annually based on a three-year average of state per capita personal income compared to the national average. The formula is designed to provide a higher federal matching rate to states with lower per capita income. No state receives less than 50% or more than 83%.

(16) **Individualized Family Service Plan (IFSP)** – A written plan of early childhood special education, related services, early intervention services, and other services developed in accordance with criteria established by the State Board of Education for each child eligible for services. See OAR 581-015-2700 to 581-015-2910, Early Intervention and Early Childhood Special Education Programs.

(17) **Medical Assistance Program** – A program administered by the Division that provides and pays for health services for eligible Oregonians. The Oregon Medical Assistance Program includes TCM services provided to clients eligible under the Oregon Health Plan (OHP) Title XIX, and the Children's Health Insurance Program (CHIP) Title XXI.

(18) **Monitoring** – Ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client's

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health care decision makers, family members, providers or other entities or individuals when the purpose of the contact is directly related to managing the eligible client's care to ensure the care plan is effectively implemented.

(19) Oregon Health Plan (OHP) – The Medicaid program in Oregon is known as the OHP, which consists of a series of laws passed by the Oregon Legislature with the intention of providing universal access to healthcare to Oregonians. OHP is also governed by many federal laws.

(20) Reassessment – Periodically re-evaluating the eligible client to determine whether or not medical, social, educational, or other services continue to be adequate to meet the goals and objectives identified in the care plan. Reassessment decisions include those to continue, change, or terminate TCM services. A reassessment must be conducted at least annually or more frequently if changes occur in an eligible client's condition; or when resources are inadequate or the service delivery system is non-responsive to meet the client's identified service needs.

(21) Referrals – Performing activities such as scheduling appointments that link the eligible client with medical, social, or educational providers, or other programs and services, and follow-up and documentation of services obtained.

(22) Targeted Case Management (TCM) Services – Case management services furnished to a specific target group of eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation).

(23) Unit of Government – A city, a county, a special purpose district, or other governmental unit in the state.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 409.010 & 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-138-0005

### Payment for Targeted Case Management Services Eligible for Federal Financial Participation

(1) This rule is to be used in conjunction with Targeted Case Management (TCM) rules 410-138-0000 through 410-138-0009 and 410-138-0390, and the Division of Medical Assistance Programs' (Division) General Rules (chapter 410, division 120).

(2) The TCM services rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(3) Payment will be made to the TCM provider enrolled with the Department of Human Services (Department) as a unit of government provider meeting the requirements set forth in the provider enrollment agreement.

(4) Signing the provider enrollment agreement sets forth the relationship between the State of Oregon, the Department and the TCM provider and constitutes agreement by the TCM provider to comply with all applicable Department rules, and federal and state laws and regulations.

(5) The TCM provider will bill according to administrative rules in chapter 410, division 138 and the TCM supplemental information. Payments will be made using the Medicaid Management Information System (MMIS) and the TCM provider will retain the full payment for covered services provided. The TCM provider must have a Trading Partner Agreement with the Department prior to submission of electronic transactions.

(6) TCM authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rates in effect during the quarter when the TCM claims will be paid:

(a) The TCM provider's non-federal matching share means the public funds share of the Medicaid payment amount. Pursuant to the Social Security Act, 42 CFR 433.51, public funds may be considered as the state's share in claiming federal financial participation, if the public funds meet the following conditions:

(A) The public funds are transferred to the Department from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds must be allowable under the Social Security Act 42 CFR 433 Subpart B;

(b) The unit of government TCM provider must pay the non-federal matching share to the Department in accordance with OAR 410-120-0035.

(7) Before the Department pays for TCM claims, the Department must receive the corresponding local match payment as described in this rule. Failure to timely pay the non-federal matching funds to the Department will delay payment and may require the TCM provider to resubmit the claims.

(8) The Department will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If the Department has previously paid the TCM provider for any claim, which CMS disallows, the TCM provider must reimburse the Department the amount of the claim that the Department has paid to the TCM provider, less any amount previously paid by the unit of government TCM provider to the Department for the non-federal match portion for that claim.

(9) Providers can only bill Medicaid for allowable activities in the TCM program, that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, educational, and other services. One or more of the following allowable activities must occur before billing:

(a) Assessment;

(b) Development of a care plan;

(c) Referral (including follow up); and

(d) Monitoring (including follow up).

(10) TCM claims must not duplicate payments made to:

(a) Public agencies or private entities for any other case management activities or direct services provided under the State Plan or the Oregon Health Plan (OHP), through fee for service, managed care, or other contractual arrangement, that meet the same need for the same client at the same point in time;

(b) A TCM provider by program authorities under different funding authority than the Oregon Health Plan, including but not limited to other public health funding;

(c) A TCM provider for administrative expenditures reimbursed under agreement with the Department or any other program or funding source.

(11) Medicaid is only liable for the cost of otherwise allowable case management services if there are no other third parties liable to pay. However, while schools are legally liable to provide IDEA-related health services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903(c) of the Act requires Medicaid to be primary to the U.S. Department of Education for payment for covered Medicaid services furnished to a child with a disability. These services may include health services included in a child's Individualized Education Program (IEP) or Individual Family Service Plan (IFSP) under the IDEA. Payment for those services that are included in the IEP or IFSP would not be available when those services are not covered Medicaid services.

(12) The Department's acceptance of cost data provided by provider organizations for the purpose of establishing rates paid for TCM services does not imply or validate the accuracy of the cost data provided.

(13) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-138-0007

### Targeted Case Management – Covered Services

(1) Targeted case management services shall be furnished only to categorically eligible clients. The Medicaid State Plan does not allow TCM services for clients who are covered under the Medicaid Standard benefit package.

(2) Targeted case management services billed to Medicaid must be for allowable activities and include one or more of the following components:

(a) Assessment of an eligible client in the target group to determine the need for medical, educational, social, or other services as follows:

(A) Taking client history;

(B) Identifying the needs of the client, and completing related documentation;

(C) Gathering information from other sources, such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible client;

(D) Periodically reassessing a client to determine whether the client's needs or preferences have changed. A reassessment must be conducted at least annually or more frequently if changes occur in an individual's condition;

(b) Development of a care plan based on the information collected through the assessment or periodic reassessment, specifying the goals and

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actions to address the medical, social, educational, and other services needed by the eligible client. This may include:

(A) Active participation of the eligible client in the target group; or

(B) Working with the eligible client or the eligible client's authorized health care decision maker and others to develop goals and identify a course of action to respond to the assessed needs of the eligible client;

(c) Referral, linking and coordination of services and related activities including but not limited to:

(A) Scheduling appointments for the eligible client in the target group to obtain needed services; and

(B) Activities that help link the eligible client with medical, social, or educational providers, or other programs and services (e.g., food vouchers, transportation, child care, or housing assistance) that address identified needs and achieve goals specified in the care plan. The case management referral activity is completed once the referral and linkage has been made;

(C) Reminding and motivating the client to adhere to the treatment and services schedules established by providers;

(d) Monitoring or ongoing face-to-face or other contact;

(A) Monitoring and follow-up activities include activities and contacts:

(i) To ensure the care plan is effectively implemented;

(ii) To help determine whether the services are being furnished in accordance with the eligible client's care plan;

(iii) To determine whether the care plan adequately addresses the needs of the eligible client in the target group;

(iv) To adjust the care plan to meet changes in the needs or status of the eligible client;

(B) Monitoring activities may include contacts with:

(i) The participating eligible client in the target group;

(ii) The eligible client's healthcare decision makers, family members, providers, or other entities or individuals when the purpose of the contact is directly related to the management of the eligible client's care.

(3) TCM services billed to Medicaid must be documented in individual case records for all individuals receiving case management. The documentation must include:

(a) The name of the individual;

(b) The dates of the case management services;

(c) The name of the provider agency (if relevant) and the person providing the case management service;

(d) The nature, content, units of the case management services received and whether goals specified in the care plan have been achieved;

(e) Whether the individual has declined services in the care plan;

(f) The need for, and occurrences of, coordination with other case managers;

(g) A timeline for obtaining needed services;

(h) A timeline for reevaluation of the plan.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-138-0009

### Targeted Case Management — Services Not Covered

(1) TCM services do not cover:

(a) Direct delivery of an underlying medical, educational, social, or other service, to which the eligible client has been referred;

(b) Providing transportation to a service to which an eligible client is referred;

(c) Escorting an eligible client to a service;

(d) Providing child care so that an eligible client may access a service;

(e) Contacts with individuals who are not categorically eligible for Medicaid, or who are categorically eligible for Medicaid but not included in the eligible target population when those contacts relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care. Individuals receiving the Standard benefit package are not categorically eligible for Medicaid and therefore are not eligible for targeted case management;

(f) Assisting an individual, who has not yet been determined eligible for Medicaid, to apply for or obtain this eligibility;

(g) TCM services provided to an individual if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs;

(h) Activities for which third parties are liable to pay.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-138-0020

### Targeted Case Management Programs

(1) This rule is in effect for services rendered retroactive to July 1, 2009, except for the Asthma/Healthy Homes Program, which is retroactive to July 1, 2010.

(2) TCM programs include the following:

(a) Asthma/Healthy Homes;

(b) Babies First/CaCoon;

(c) Early Intervention/Early Childhood Special Education (EI/ECSE);

(d) Human Immunodeficiency Virus (HIV);

(e) Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18; and

(f) Federally Recognized Tribal Governments.

(3) The TCM Programs are medical assistance programs operated by public health authorities, unit of government providers, or Federally Recognized Tribal Governments in Oregon who are enrolled as TCM providers with the Department. Participation by providers is voluntary and subject to approval by the Department and the Centers for Medicare and Medicaid Services (CMS). With the exception of the Federally Recognized Tribal Governments TCM programs, the TCM programs authorized under these rules are cost-sharing (Federal Financial Participation (FFP) matching) programs in which the TCM provider as a public entity, unit of government, must pay the non-federal matching share of the amount of the TCM claims. (See Oregon Administrative Rule (OAR) 410-138-0005, Payment for Targeted Case Management Services Eligible for Federal Financial Participation.)

(4) Federally Recognized Tribal Governments TCM services authorized under these rules provided to Tribal members at an Indian Health Service facility operated by the Indian Health Service, by an Indian tribe or tribal organization are reimbursed at 100 percent by Title XIX (Medicaid) and Title XXI Children's Health Insurance Program (CHIP).

(5) The Department may not authorize services or reimbursement for direct care as part of any targeted case management activity. The following are targeted case management programs and services:

(a) The TCM Asthma/Healthy Homes program improves access to needed services for eligible clients with poorly controlled asthma or a history of environmentally induced respiratory distress. The TCM Asthma/Healthy Homes program services include management of medical and non-medical services, which address medical, social, nutritional, educational, housing, environmental, and other needs. Home visits constitute an integral part of the delivery of TCM services, provided by a TCM Asthma/Healthy Homes case manager consistent with these rules;

(b) The TCM Babies First program improves access to needed medical and non-medical services, which address medical, social, educational, and other services for at risk infants and children through four years of age. The TCM CaCoon program improves access to needed medical, psychosocial, educational, and other services for infants, children, and youth through age twenty with specific diagnoses or very high risk factors. These clients are categorical eligibles covered by Medicaid and are at risk of poor health outcomes as outlined in OAR 410-138-0040, (Risk Criteria – Babies First/CaCoon). Home visits constitute a significant part of the delivery of targeted case management services, provided by a Babies First/CaCoon case manager consistent with these rules;

(c) The TCM Early Intervention/Early Childhood Special Education (EI/ECSE) program is a medical assistance program provided by enrolled EI/ECSE providers that meet the criteria approved by the State Superintendent of Public Instruction to administer the provision of EI and ECSE. The TCM EI/ECSE program provides services to categorically eligible children with disabilities, receiving EI/ECSE services from birth until they are eligible for public school. These TCM services are available on a fee-for-service basis, within the limitations established by the Medical Assistance Program and chapter 410, division 138 rules, consistent with the requirements of the Individuals with Disabilities Education Act (IDEA). This qualifies such programs for state reimbursement under EI/ECSE programs OAR 581-015-2700 through 581-015-2910. An enrolled TCM EI/ECSE provider must be a contractor/agency designated by the Oregon Department of Education (ODE) to administer the provision of EI and ECSE within selected service areas or be a sub-contractor with such a contractor. TCM EI/ECSE program services include management of medical and non-medical services, to assist children with disabilities in gaining access to needed medical, social, educational, developmental and other



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appropriate services in coordination with a child's Individualized Family Service Plan (IFSP) developed and implemented pursuant to IDEA and based on information collected through the TCM assessment or periodic reassessment process;

(d) The TCM HIV program improves access to needed medical and non-medical services, which address physical, psychosocial, nutritional, educational, and other services for Medicaid categorically eligible clients with symptomatic or asymptomatic HIV disease. Home visits constitute an integral part of the delivery of targeted case management services, provided by a TCM HIV case manager consistent with these rules. Without targeted case management services, an eligible client's ability to remain safely in their home may be at risk;

(e) The TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 program improves access to needed medical and non-medical services, which address physical, psychosocial, educational, nutritional and other services to Medicaid categorically eligible pregnant women or custodial parents with children under the age of 18 who have alcohol and/or drug addiction issues. Targeted clients are those who are not yet ready to actively engage in addiction treatment services. TCM services are provided by an enrolled TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 provider consistent with these rules. Participation by all TCM providers is voluntary and subject to approval by the Division CMS;

(f) The TCM Federally Recognized Tribal Government program improves access to needed medical and non-medical services, which address health, psychosocial, economic, educational, nutritional and other services for Medicaid categorically eligible tribal members served by tribal programs, provided by an enrolled tribal TCM provider consistent with these rules. The target group includes those members receiving elder care; individuals with diabetes; children and adults with health and social service care needs, and pregnant women.

(6) Refer to the State Plan Amendments for participating counties for each TCM program. The State Plan Amendments are located at [http://www.oregon.gov/DHS/healthplan/tools\\_policy/sp\\_3.pdf](http://www.oregon.gov/DHS/healthplan/tools_policy/sp_3.pdf).

(7) Provision of any TCM Program services may not restrict an eligible client's choice of providers, in accordance with 42 CFR 441.18 (a);

(a) Eligible clients must have free choice of available TCM Program service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n and 42 CFR 441.18(b);

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 409.110 & 414.065

Hist: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-138-0040

### Targeted Case Management Babies First/CaCoon Program Risk Criteria

(1) This rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule sets the medical risk factors for the TCM Babies First programs for infants and preschool children (birth through age four):

- (a) Drug exposed infant;
- (b) Alcohol exposed infant;
- (c) Infant Human Immunodeficiency Virus (HIV) Positive;
- (d) Maternal Phenylketonuria (PKU) or HIV Positive;
- (e) Intracranial hemorrhage grade I or II;
- (f) Seizures or maternal history of seizures;
- (g) Perinatal asphyxia;
- (h) Small for gestational age;
- (i) Very low birth weight (1500 grams or less);
- (j) Mechanical ventilation for 72 hours or more prior to discharge;
- (k) Neonatal hyperbilirubinemia;
- (l) Congenital infection (e.g., Toxoplasmosis, Rubella, Cytomegalovirus, Herpes Simplex Virus, Other Infections);
- (m) Central Nervous System (CNS) infection;
- (n) Head trauma or near drowning;
- (o) Failure to grow;
- (p) Suspect vision impairment;
- (q) Family history of childhood onset hearing loss;
- (r) Prematurity;
- (s) Lead exposure;
- (t) Suspect hearing loss;

(3) This rule sets the social risk factors for the TCM Babies First program from birth through 4 years:

- (a) Maternal age 16 years or less;
- (b) Parents with developmental disabilities or intellectual impairment;
- (c) Parental alcohol or substance abuse;
- (d) At-risk caregiver;
- (e) Concern of parent/provider;
- (f) Parent with limited financial resources;
- (g) Parent with history of mental illness;
- (h) Parent with child welfare history;
- (i) Parent with domestic violence history;
- (j) Parent with sensory impairment or physical disability;
- (k) Other evidence-based social risk factors.

(4) The rule sets the very high risk medical factors for the TCM CaCoon program for birth through age 20:

- (a) Intraventricular hemorrhage (grade III, IV);
- (b) Periventricular leukomalacia (PVL) or chronic subdurals;
- (c) Perinatal asphyxia and seizures;
- (d) Seizure disorder;
- (e) Oral-motor dysfunction requiring specialized feeding program (including gastrostomy);
- (f) Chronic lung disorder;
- (g) Suspect neuromuscular disorder.

(5) This rule sets the diagnosis for the TCM CaCoon program from birth through 20 years:

- (a) Heart disease;
- (b) Chronic orthopedic disorders;
- (c) Neuromotor disorders including cerebral palsy and brachial nerve palsy;
- (d) Cleft lip and palate and other congenital defects of the head and face;
- (e) Genetic disorders, e.g., cystic fibrosis, neurofibromatosis;
- (f) Multiple minor physical anomalies;
- (g) Metabolic disorders, e.g., PKU;
- (h) Spina bifida;
- (i) Hydrocephalus or persistent ventriculomegaly;
- (j) Microcephaly and other congenital or acquired defects of the CNS;
- (k) Hemophilia;
- (l) Organic speech disorders;
- (m) Hearing loss;
- (n) Traumatic brain injury;
- (o) Fetal alcohol spectrum disorder;
- (p) Autism, autism spectrum disorder;
- (q) Behavioral or mental health disorder with developmental delay;
- (r) Chromosome disorders;
- (s) Positive newborn blood screen;
- (t) HIV, seroconversion;
- (u) Visual Impairment;
- (v) Developmental delay; or
- (w) Other chronic conditions not listed.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 409.110 & 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-138-0060

### Targeted Case Management Program - Provider Requirements

(1) This rule is in effect for services rendered retroactive to July 1, 2009, except for the TCM Asthma/Healthy Homes Program, that is retroactive to July 1, 2010.

(2) TCM Babies First/CaCoon providers must be public health authorities with the ability to link with the Title V Statewide Maternal and Child Health Data System or provide another statewide-computerized tracking and monitoring system.

(3) TCM Asthma/Healthy Homes, Early Intervention/Early Childhood Special Education (EI/ECSE), and Human Immunodeficiency Virus (HIV) provider organizations must be unit of government providers. TCM EI/ECSE providers may also be a subcontractor of a government entity.

(4) TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18 provider organizations must be locally based agencies.

(5) TCM Federally Recognized Tribal Governments providers must be Indian Health Services/638 facilities.

(6) All providers must demonstrate the ability to provide all core elements of case management services including:

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(a) Comprehensive assessment, which may include triage and environmental assessment, of client needs. All providers for the TCM BabiesFirst/CaCooon program must provide comprehensive nursing assessment of client needs;

(b) Reassessment of the client's status and needs annually or more frequently with a significant change in client's condition;

(c) Development and periodic revision of a comprehensive care and service plan;

(d) Referral and linking/coordination of services;

(e) Ongoing monitoring and follow-up of referral and related services;

(f) A financial management capacity and system that provides documentation of services and costs, and provides computerized tracking and monitoring to assure adequate follow-up and avoid duplication.

(7) Except for Federally Recognized Tribal Governments providers, the TCM provider shall provide the non-federal matching share from public funds in compliance with OAR 410-138-0005.

(8) If the provider is a subcontractor of a governmental entity, the governmental entity shall make the non-federal matching share with public fund payments in compliance with OAR 410-138-0005.

(9) All program providers must demonstrate the following TCM experience and capacity:

(a) Understanding and knowledge of local and state resources and services available to the target population;

(b) Demonstrated case management experience in coordinating and linking community resources as required by the target population;

(c) Demonstrated and documented experience providing services for the target population;

(d) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(e) A financial management capacity and system that provides documentation of services and costs;

(f) Capacity to document and maintain client case records in accordance with state and federal requirements, including requirement for recordkeeping on OAR 410-138-0007 and 410-120-1360; confidentiality requirements in ORS 192.518 – 192.524, 179.505 and 411.320; and HIPAA Privacy requirements applicable to case management services;

(g) A sufficient number of staff to meet the case management service needs of the target population;

(h) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(i) Enrolled as a TCM provider with the Department and meeting the requirements set forth in the provider enrollment agreement.

(10) TCM Asthma/Healthy Homes Program case managers must possess the following additional qualifications:

(a) A current active Oregon registered nurse (RN) license; or

(b) A registered environmental health specialist; or

(c) An asthma educator certified by the National Asthma Education and Prevention Program; or

(d) A community health worker certified by the Stanford Chronic Disease Self-Management Program; or

(e) A case manager working under the supervision of a licensed registered nurse or a registered environmental specialist.

(11) The TCM case managers for the Babies First/CaCooon program must be:

(a) An employee of a local county health department, or other public or private agency contracted by a local county health department;

(b) A licensed registered nurse with one year of experience in community health, public health, or child health nursing, or be a community health worker, family advocate, or promotora working under the direction of the above; and

(c) Working under the policies, procedures, and protocols of the State Title V Maternal and Child Health Program and Medicaid.

(12) Additional qualifications for TCM EI/ECSE provider organizations include the following:

(a) TCM EI/ECSE providers must meet the criteria to administer the provision of EI and ECSE within selected service areas designated by the Oregon Department of Education, qualifying such programs for state reimbursement under EI/ECSE Programs (OAR 581-015-2700 through 581-015-2910);

(b) Must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or sub-contractors with such a contractor, and must meet the following qualifications;

(c) Demonstrated case management experience in conjunction with service coordination under OAR 581-015-2840 specified on a child's

Individualized Family Service Plan (IFSP) for coordinating and linking such community resources as required by the target population; and

(d) Capacity to document and maintain individual case records in accordance with confidentiality requirements in the Individuals with Disabilities Education Act, ORS 192.518 – 192.524, 179.505, and 411.320, and HIPAA Privacy requirements in 45 CFR 160 and 164, if applicable.

(13) Qualifications for TCM EI/ECSE Supervisors of EI/ECSE service coordinators of targeted case management services must:

(a) Possess a minimum of a master's degree in early childhood special education or a related field, and have three years of experience with infants, toddlers, young children, and families;

(b) Hold a Teacher Standard and Practices Commission (TSPC) administrative endorsement or within 12 months of employment, complete authorization as an Early Childhood Supervisor under OAR 581-015-2910; and

(c) Have a professional development plan based on the content of the EI/ECSE competencies.

(14) Qualifications of EI and ECSE Specialists performing case management/Targeted Case Management services must:

(a) Possess a minimum of a baccalaureate degree in early childhood, special education or a related field;

(b) Have a professional development plan based on the content of the EI/ECSE competencies; and

(c) Hold one of the following credentials:

(A) TSPC licensure or endorsement in EI/ECSE;

(B) TSPC licensure or endorsement in related field; or

(C) Within 12 months of employment, authorization as an Early Childhood Specialist under OAR 581-15-2905.

(15) Qualifications of EI and ECSE Related services personnel must possess a minimum of a baccalaureate degree and a valid license necessary to practice in Oregon. Related services personnel who also provide service coordination as outlined in OAR 581-015-2840 must have:

(a) TSPC licensure in their area of discipline; or

(b) State licensure in their area of discipline; and

(c) A professional development plan based on the content of the EI/ECSE competencies;

(d) The Individuals with Disabilities Education Act (IDEA);

(e) The nature and scope of services available under the Oregon EI/ECSE programs.

(16) In addition to the above, all must be employees of the Oregon Department of Education (ODE), its contractors or subcontractors; and must have demonstrated knowledge and understanding about:

(a) The Oregon Department of Education EI/ECSE programs OAR 581-015-2700 through 581-015-2910, including these rules and the applicable State Medicaid Plan Amendment;

(b) Case Management experience in conjunction with service coordination under OAR 581-015-2840 for coordinating and linking such community resources as required by the target population to assist clients in gaining access to needed medical, social, educational, developmental and other appropriate services in coordination with the eligible child's IFSP;

(c) The Individuals with Disabilities Education Act (IDEA);

(d) The nature and scope of services available under the Oregon EI/ECSE program, including the TCM services, and the system of payments for services and other pertinent information.

(17) TCM HIV providers must have the financial management capacity and system that provides documentation of services and costs and is able to generate quarterly service utilization reports that can be used to monitor services rendered against claims submitted and paid. The service utilization reporting requirements are as follows:

(a) Report on the number of unduplicated clients receiving services during the reporting period;

(b) Report on the number of full time equivalent (FTE) case managers providing services during the reporting period; and

(c) Report on the number of distinct case management activities performed during the reporting period (Triage Assessments, Comprehensive Assessments, Re-Assessments, Care Plan Development, Referral and Related Services, and Monitoring Follow-Up) along with the total number of 15-minute increments associated with each activity category.

(18) TCM HIV case managers must possess the following education and qualifications:

(a) A current active Oregon registered nurse (RN) license or Bachelor of Social Work, or other related health or human services degree from an accredited college or university; and

(b) Documented evidence of completing the Department's HIV Care and Treatment designated HIV Case Manager training, and must participate

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in the Department's on-going training for HIV case managers. The training must either be provided by the Department, or be approved by the Department and provided by the TCM provider organization.

(19) The TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18 case manager must;

(a) Possess a combination of education and experience necessary to support case planning and monitoring. The case manager must be able to demonstrate an understanding of issues relating to substance abuse and community supports;

(b) Demonstrate continuous sobriety under a nonresidential or independent living condition for the immediate past two years;

(c) Meet at least one of the following qualifications:

(A) Be a licensed Medical Provider, Qualified Mental Health Professional, or Qualified Mental Health Associate; or

(B) Possess certification as an Alcohol and Drug Counselor (CADC) level I, II, or III; or

(C) Complete a Peer Services Training Program following a curriculum approved by the Department's Addictions and Mental Health Division and be:

(i) A self-identified person currently or formerly receiving mental health services; or

(ii) A self-identified person in recovery from a substance use disorder, who meets the abstinence requirements for recovering staff in alcohol and other drug treatment programs; or

(iii) A family member of an individual who is a current or former recipient of addictions or mental health services;

(d) Work under the supervision of a Clinical Supervisor. The Clinical Supervisor must:

(A) Meet the requirements in Oregon administrative rule for alcohol and other drug treatment programs;

(B) Be certified or licensed by a health or allied provider agency to provide addiction treatment; and

(C) Possess one of the following qualifications:

(i) Five years of paid full-time experience in the field of alcohol and other drug counseling; or

(ii) A Bachelor's degree and four years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience; or

(iii) A Master's degree and three years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience;

(e) Satisfy continuing education requirements as specified by the agency providing clinical supervision specific to alcohol and other drug treatment; and

(f) Work in compliance with Medicaid policies, procedures, and protocols.

(20) A Federally Recognized Tribal Governments TCM provider must be an organization certified as meeting the following criteria:

(a) A minimum of three years experience of successful work with Native American children, families, and elders involving a demonstrated capacity to provide all core elements of tribal case management, including: assessment, case planning, case plan implementation, case plan coordination, and case plan reassessment;

(b) A minimum of three years case management experience in coordinating and linking community medical, social, educational or other resources as required by the target population;

(c) Administrative capacity to ensure quality of services in accordance with tribal, state, and federal requirements; and

(d) Evidence that the TCM organization is a federally recognized tribe located in the State of Oregon.

(21) The following are qualifications of Tribal Case Managers within provider organizations:

(a) Completion of training in a case management curriculum;

(b) Basic knowledge of behavior management techniques, family dynamics, child development, family counseling techniques, emotional and behavioral disorders, and issues around aging;

(c) Skill in interviewing to gather data and complete needs assessment, in preparation of narratives/reports, in development of service plans, and in individual and group communication;

(d) Ability to learn and work with state, federal and tribal rules, laws and guidelines relating to Native American child, adult and elder welfare and to gain knowledge about community resources and link tribal members with those resources;

(e) Knowledge and understanding of these rules and the applicable State Medicaid Plan Amendment.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 409.010, 409.110 & 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-138-0080

### Targeted Case Management Program Billing Policy

(1) This rule is in effect for services rendered retroactive to July 1, 2009, except for the Targeted Case Management (TCM) Asthma Healthy/Homes Program, which is effective July 1, 2010.

(2) Reimbursement is based on cost-based rate methodology and subject to all rules and laws pertaining to federal financial participation. The Department's acceptance of cost data provided by provider organizations for the purpose of establishing rates paid for TCM services does not imply or validate the accuracy of the cost data provided.

(3) The cost-based rate will be derived by considering the following expenditures directly attributable to TCM staff:

(a) TCM staff salaries and other personnel expenses;

(b) Supervisory salaries and other personnel expenses;

(c) Administrative support salaries and other personnel expenses;

(d) Services and supply expenses;

(e) Various overhead expenditures, if not already considered in the indirect rate.

(4) The Division will accept a claim up to 12 months from the date of service. See provider rules 407-120-0340, (Claim and PHP Encounter Submission), and OAR 410-120-1300, (Timely Submission of Claims).

(5) Providers shall only bill for allowable activities in the TCM programs that assist individuals eligible under the Medicaid State Plan to gain access to needed medical, social, educational, housing, environmental, and other services.

(6) The Division may not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client's care plan. Medical services must be provided and billed separately from case management services. The Department shall recover duplicate payments.

(7) The Division may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

(8) In general, the Medicaid program is the payer of last resort and a provider is required to bill other resources before submitting the claim to Medicaid. This requirement means that other payment sources, including other federal or state funding sources, must be used before the Department may be billed for covered TCM services. However, the following exceptions apply to the requirement to pursue third party resources:

(a) For TCM Early Intervention /Early Childhood School Education (EI/ECSE) services provided under the Individuals with Disabilities Education Act (IDEA), 1903(c) of the Social Security Act and 34CFR300.154 Methods of Ensuring Services make Medicaid/Children's Health Insurance Program (CHIP) primary payer before Oregon Department of Education (ODE) or the Educational Agency (EA), for a covered TCM EI/ECSE service provided to a Medicaid-eligible child receiving Service Coordination/Case Management pursuant to the Medicaid-eligible child's Individualized Family Service Plan (IFSP), the services are documented as required under the TCM rules, and subject to the applicable reimbursement rate;

(b) If TCM EI/ECSE services are provided under Title V of the Social Security Act Maternal and Child Health Services Block Grant, Medicaid-covered TCM services provided by a Title V grantee are paid by Medicaid before the Title V funds;

(c) CMS recognizes that while public education agencies are required to provide IDEA services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903 (c) of the Social Security Act requires Medicaid to be primary to the U.S. Department of Education for payment of covered services that may also be considered special education, related services, or early intervention services, or services provided under IDEA.

(9) Any place of service is valid.

(10) Prior authorization is not required.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 409.010, 409.050, 409.110 & 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11



# ADMINISTRATIVE RULES

## 410-138-0390

### Targeted Case Management Retroactive Payments

(1) Providers may submit claims retroactively for services provided to the targeted populations described in 410-138-0020(2)(a–f) if the claims meet the following criteria:

(a) Services were provided less than 12 months prior to the date of first claim submission, and were provided on or after the date indicated in the rule listed above, and were allowable services in accordance with OAR 410-138-0007;

(b) The maximum number of units billed does not exceed the maximum allowed under each TCM program.

(c) The case manager was appropriately licensed or certified, and met all current requirements for case managers at the time the service was provided, as described in the provider requirements rule OAR 410-138-0060 appropriate for the TCM program:

(d) Documentation regarding provider qualifications and the services that the provider retroactively claims must have been available at the time the services were performed;

(2) For all programs, except the Substance Abusing Pregnant Women and Substance Abusing Parents With Children Under Age 18 program, TCM claims already paid by the Division with a prior rate may not be adjusted or resubmitted for the sole purpose of receiving a different rate.

(3) The Division may not allow duplicate payments to be made to the same or different providers for the same service for the same client, nor will payment be allowed for services for which third parties are liable to pay (see also 410-138-0005).

(4) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-138-0420

### Targeted Case Management Asthma/Healthy Home — Risk Criteria

(1) This administrative rule will be implemented contingent on Centers for Medicare and Medicaid (CMS) approval for the Targeted Case Management (TCM) Asthma/Healthy Home Program. This rule is to be used in conjunction with the Division of Medical Assistance Programs' (Division) General Rules (chapter 410, division 120) and other Targeted Case Management Program rules 410-138-0000 through 410-138-0009.

(2) The target group is Medicaid eligible children with poorly controlled asthma or a history of environmentally induced respiratory distress, which can result in a life threatening asthma exacerbation or exacerbation of respiratory distress.

(3) Risk factors for the target group could include, but are not limited to:

- (a) Unscheduled visits for emergency or urgent care;
- (b) One or more in-patient stays;
- (c) History of intubation or Intensive Care Unit care;
- (d) A medication ratio of control medications to rescue medications of less than or equal to .33 indicating less than desirable control of asthma;
- (e) Environmental or psychosocial concerns raised by medical home;
- (f) School day loss greater than two school days per year;
- (g) Inability to participate in sports or other activities due to asthma;
- (h) Homelessness;
- (i) Inadequate housing, heating or sanitation.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11

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**Rule Caption:** January 2011 – update criteria for definitions, pharmacy, hearings, client materials and payment.

**Adm. Order No.:** DMAP 42-2010

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 410-141-0000, 410-141-0070, 410-141-0080, 410-141-0120, 410-141-0220, 410-141-0260, 410-141-0263, 410-141-0280, 410-141-0300, 410-141-0420

**Subject:** The Oregon Health Plan (OHP or Managed Care) Program administrative rules govern the Division of Medical Assistance Programs' (Division) payment for services to certain clients. The Division needs to amend rules listed above as follows:

- 410-141-0000 to update certain definitions;
- 410-141-0070 to update pharmacy criteria;
- 410-141-0080 to update disenrollment criteria;
- 410-141-0120 to take care of non-substantive “housekeeping” corrections;
- 410-141-0220 to update urgent care reference;
- 410-141-0260 and 410-141-0263 to update hearings criteria;
- 410-141-0280 and 410-141-0300 to update client materials criteria;
- 410-141-0420 to update third party liability resource criteria.

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

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-141-0000

### Definitions

(1) Action – In the case of a Prepaid Health Plan (PHP):

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the Division of Medical Assistance Programs (Division);

(e) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(f) For a Division member in a single Fully Capitated Health Plan (FCHP) or Mental Health Organization (MHO) service area, the denial of a request to obtain services outside of the FCHP or MHO's participating provider panel pursuant to OAR 410-141-0160 and 410-141-0220.

(2) Addictions and Mental Health Division (AMH) – The Department of Human Services (Department) office responsible for the administration of the state's policy and programs for mental health, chemical dependency prevention, intervention, and treatment services.

(3) Administrative Hearing – A Department hearing related to an action, including a denial, reduction or termination of benefits that is held when requested by the Oregon Health Plan (OHP) client or Division member. A hearing may also be held when requested by an OHP client or Division member that believes a claim for services was not acted upon with reasonable promptness or believes the payor took an action erroneously.

(4) Advance Directive – A form that allows a person to have another person make health care decisions when he/she cannot make decisions and tells a doctor if the person does not want any life sustaining help if he/she is near death.

(5) Aged – Individuals who meet eligibility criteria established by the Department Seniors and People with Disabilities Division (SPD) for receipt of medical assistance because of age.

(6) Americans with Disabilities Act (ADA) – Federal law promoting the civil rights of persons with disabilities. The ADA requires that reasonable accommodations be made in employment, service, delivery and facility accessibility.

(7) Alternative Care Settings – Sites or groups of practitioners that provide care to Division members under contract with the Division member's PHP. Alternative care settings include but are not limited to urgent care centers, hospice, birthing centers, out-placed medical teams in community or mobile health care facilities, and outpatient surgicenters.

(8) Ancillary Services – Those medical services under the OHP not identified in the definition of a condition/treatment pair, but medically appropriate to support a service covered under the OHP benefit package. Ancillary services and limitations are referenced in the General Rules OARs 410-120-1210, Benefit Packages and 410-120-1200, Exclusions and applicable individual program rules.

(9) Appeal – A request for review of an action as defined in this rule.

(10) Automated Voice Response (AVR) – A Department computer system that provides information on the current eligibility status of OHP clients and Division members by phone or by Web access.

(11) Blind – Individuals who meet eligibility criteria established by the Department' SPD for receipt of medical assistance because of a condition or disease that causes or has caused blindness.

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(12) Capitated Services – Those covered services that a PHP or Primary Care Manager (PCM) agrees to provide for a capitation payment under the Division OHP contract or agreement.

(13) Capitation Payment:

(a) Monthly prepayment to a PHP for the provision of all capitated services needed by OHP clients enrolled with the PHP;

(b) Monthly prepayment to a PCM to provide primary care management services for an OHP client enrolled with the PCM. Payment is made on a per OHP client, per month basis.

(14) Centers for Medicare and Medicaid Services (CMS) – The federal agency under the Department of Health and Human Services (DHHS), responsible for approving the waiver request to operate the OHP Medicaid Demonstration Project.

(15) CFR – Code of Federal Regulations

(16) Chemical Dependency Organization (CDO) – PHP that provides and coordinates chemical dependency outpatient, intensive outpatient and opiate substitution treatment services as capitated services under the OHP. All chemical dependency services covered under the OHP are covered as capitated services by the CDO.

(17) Chemical Dependency Services – Assessment, treatment and rehabilitation on a regularly scheduled basis, or in response to crisis for alcohol and/or other drug abusing or dependent clients and their family members or significant others, consistent with Level I and/or Level II of the “Chemical Dependency Placement, Continued Stay, and Discharge Criteria.”

(18) Children’s Health Insurance Program (CHIP) – A Federal and State funded portion of the Division established by Title XXI of the Social Security Act and administered in Oregon by the Department.

(19) Children Receiving Children, Adults and Families (CAF) Child Welfare or Oregon Youth Authority (OYA) Services – Individuals who are receiving medical assistance under ORS 414.025(2)(f), (i), (j), (k) and (o), 418.034, and 418.187 to 418.970. These individuals are generally children in the care and/or custody of CAF, the Department, or OYA who are in placement outside of their homes.

(20) Claim – (1) a bill for services; (2) a line item of a service; or (3) all services for one client within a bill.

(21) Client Enrollment Services (CES) – The Division unit responsible for adjustments to enrollments, retroactive disenrollment and enrollment of newborns.

(22) Clinical Record – The clinical record includes the medical, dental or mental health records of an OHP client or Division member. These records include the PCP’s record, the inpatient and outpatient hospital records and the Exceptional Needs Care Coordinator (ENCC), complaint and disenrollment for cause records that may reside in the PHP’s administrative offices.

(23) Cold Call Marketing – Any unsolicited personal contact by a PHP with a potential member for marketing as defined in this rule.

(24) Comfort Care – The provision of medical services or items that give comfort and/or pain relief to an individual who has a terminal illness. Comfort care includes the combination of medical and related services designed to make it possible for an individual with terminal illness to die with dignity and respect and with as much comfort as is possible given the nature of the illness. Comfort care includes but is not limited to care provided through a hospice program (see Hospice rules), pain medication, and palliative services including those services directed toward ameliorating symptoms of pain or loss of bodily function or to prevent additional pain or disability. Comfort care includes nutrition, hydration and medication for disabled infants with life-threatening conditions not covered under condition/treatment pairs. These guarantees are provided pursuant to 45 CFR, Chapter XIII, 1340.15. Where applicable comfort care is provided consistent with Section 4751 OBRA 1990 – Patient Self Determination Act and ORS 127 relating to health care decisions as amended by the Sixty-Seventh Oregon Legislative Assembly, 1993. Comfort care does not include diagnostic or curative care for the primary illness or care focused on active treatment of the primary illness with the intent to prolong life.

(25) Community Mental Health Program (CMHP) – The organization of all services for persons with mental or emotional disorders and developmental disabilities operated by, or contractually affiliated with, a local Mental Health Authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Department Addictions and Mental Health Division (AMH).

(26) Co-morbid Condition – A medical condition/diagnosis (i.e., illness, disease and/or disability) coexisting with one or more other current and existing conditions/diagnoses in the same patient.

(27) Community Standard – Typical expectations for access to the health care delivery system in the Division member’s or PCM member’s community of residence. Except where the community standard is less than sufficient to ensure quality of care, the Division requires that the health care delivery system available to Division members in PHPs and to PCM members take into consideration the community standard and be adequate to meet the needs of the Division and PCM members.

(28) Condition/Treatment Pair – Diagnoses described in the International Classification of Diseases Clinical Modifications, 9th edition (ICD-9-CM), the Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV), and treatments described in the Current Procedural Terminology, 4th edition (CPT-4) or American Dental Association Codes (CDT-2), or the Department AMH Medicaid Procedure Codes and Reimbursement Rates, which, when paired by the Health Services Commission, constitute the line items in the Prioritized List of Health Services. Condition/treatment pairs may contain many diagnoses and treatments. The condition/treatment pairs are referred to in OAR 410-141-0520.

(29) Continuing Treatment Benefit – A benefit for OHP clients who meet criteria for having services covered that were either in a course of treatment or were scheduled for treatment on the day immediately prior to the date of conversion to an OHP benefit package that doesn’t cover the treatment.

(30) Co-payment – The portion of a covered service that a Division member must pay to a provider or a facility. This is usually a fixed amount that is paid at the time one or more services are rendered.

(31) Contract – The contract between the State of Oregon, acting by and through its Department, the Division and an FCHP, dental care organization (DCO), physician care organization (PCO), or a CDO, or between AMH and an MHO for the provision of covered services to eligible Division members for a capitation payment. A contract may also be referred to as a service agreement.

(32) Corrective Action or Corrective Action Plan – A Division initiated request for contractor or a contractor initiated request for subcontractor to develop and implement a time specific plan, that is acceptable to the Division, for the correction of Division identified areas of noncompliance, as described in Exhibit H, Encounter Data Minimum Data Set Requirements and Corrective Action, Schedule 4, Pharmacy Data Requirements and Corrective Action, and in Exhibit B, Part VI, Section 2, Sanctions.

(33) Covered Services – Are medically appropriate health services that are funded by the Legislature and described in ORS 414.705 to 414.750; OAR 410-120-1210; 410-141-0120; 410-141-0520; and 410-141-0480; except as excluded or limited under OAR 410-141-0500 and rules in chapter 410, division 120.

(34) Dentally Appropriate – Services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the OHP member or a provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a Division member.

(35) Dental Care Organization (DCO) – A PHP that provides and coordinates capitated dental services. All dental services covered under the OHP are covered as capitated services by the DCO; no dental services are paid by the Division on a fee-for-service (FFS) basis for OHP clients enrolled with a DCO provider.

(36) Dental Case Management Services – Services provided to ensure that eligible Division members obtain dental services including a comprehensive, ongoing assessment of the dental and medical needs related to dental care of the Division member plus the development and implementation of a plan to ensure that eligible Division members obtain capitated services.

(37) Dental Emergency Services – Dental services may include, but are not limited to the treatment of severe tooth pain, unusual swelling of the face or gums, and avulsed tooth consistent with OAR 410-123-1060.

(38) Dental Practitioner – A practitioner who provides dental services to Division members under an agreement with a DCO, or is a FFS practitioner. Dental practitioners are licensed and/or certified by the state in which they practice, as applicable, to provide services within a defined scope of practice.

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(39) Department – The Department of Human Services or any of its programs or offices established in ORS chapter 407, including such divisions, programs and offices as may be established therein. Wherever the former Office of Medical Assistance Programs (OMAP) is used in contract or in administrative rule, it shall mean the Division of Medical Assistance Programs (Division). Wherever the former Office of Mental Health and Addiction Services or OMHAS is used in contract or in rule, it shall mean the Addictions and Mental Health Division (AMH). Wherever the former Seniors and People with Disabilities or SPD is used in contract or in rule, it shall mean the Seniors and People with Disabilities Division (SPD). Wherever the former Children Adults and Families or CAF is used in contract or rule, it shall mean the Children, Adults and Families Division (CAF). Wherever the former Health Division is used in contract or in rule, it shall mean the Public Health Division (PHD).

(40) Diagnostic Services – Those services required to diagnose a condition, including but not limited to radiology, ultrasound, other diagnostic imaging, electrocardiograms, laboratory and pathology examinations, and physician or other professional diagnostic or evaluative services.

(41) Disabled – Individuals who meet eligibility criteria established by DHS SPD for receipt of medical assistance because of a disability.

(42) Disenrollment – The act of discharging an OHP client from a PHP's or PCM's responsibility. After the effective date of disenrollment an OHP client is no longer required to obtain capitated services from the PHP or PCM, nor be referred by the PHP for medical case managed services or by the PCM for PCM case managed services.

(43) Division – The Division of Medical Assistance Programs or Division of the Department responsible for coordinating Medical Assistance Programs, including the OHP Medicaid Demonstration, in Oregon and CHIP. The Division writes and administers the state Medicaid rules for medical services, contracts with providers, maintains records of client eligibility and processes and pays Division providers.

(44) DMAP Member – An OHP client enrolled with a PHP.

(45) Emergency Medical Condition – A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An "emergency medical condition" is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a health care professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence. (This definition does not apply to clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210(3)(f)(B))

(46) Emergency Services – covered services furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an emergency medical condition. Emergency services include all inpatient and outpatient treatment that may be necessary to assure within reasonable medical probability that no material deterioration of the patient's condition is likely to result from, or occur during, discharge of the Division member or transfer of the Division member to another facility.

(47) Enrollment – OHP clients, subject to OAR 410-141-0060, become Division members of a PHP or PCM members of a PCM that contracts with the Division to provide capitated services. An OHP client's enrollment with a PHP indicates that the Division member must obtain or be referred by the PHP for all capitated services and referred by the PHP for all medical case managed services subsequent to the effective date of enrollment. An OHP client's enrollment with a PCM indicates that the PCM member must obtain or be referred by the PCM for preventive and primary care and referred by the PCM for all PCM case managed services subsequent to the effective date of enrollment.

(48) Enrollment Area – Client enrollment is based on the client's residential address and zip code. The address is automatically assigned a county code or Federal Information Processing Standard (FIPS) code by the system, which indicates to the Department worker that PHPs are in the area.

(49) Enrollment Year – A twelve-month period beginning the first day of the month of enrollment of the OHP client in a PHP and, for any subsequent year(s) of continuous enrollment, beginning that same day in each such year(s). The enrollment year of OHP clients who re-enroll within a calendar month of disenrollment shall be counted as if there were no break in enrollment.

(50) End Stage Renal Disease (ESRD) – End stage renal disease is defined as that stage of kidney impairment that appears irreversible and requires a regular course of dialysis or kidney transplantation to maintain life. In general, 5% or less of normal kidney function remains. If the person is 36 or more months post-transplant, the individual is no longer considered to have ESRD.

(51) Exceptional Needs Care Coordination (ENCC) – A specialized case management service provided by FCHPs to Division members identified as aged, blind or disabled who have complex medical needs, consistent with OAR 410-141-0405. ENCC includes:

(a) Early identification of those Division members who are aged, blind, disabled or who have complex medical needs;

(b) Assistance to ensure timely access to providers and capitated services;

(c) Coordination with providers to ensure consideration is given to unique needs in treatment planning;

(d) Assistance to providers with coordination of capitated services and discharge planning; and

(e) Aid with coordinating community support and social service systems linkage with medical care systems, as necessary and appropriate.

(52) Family Health Insurance Assistance Program (FHIAP) – A program in which the State subsidizes premiums in the commercial market for uninsured individuals and families with income below 185% of the Federal Poverty Level (FPL). FHIAP is funded with federal and states funds through Title XIX, XXI or both.

(53) Family Planning Services – Services for clients of childbearing age (including minors who can be considered sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(54) Fee-for-Service (FFS) Health Care Providers – Health care providers who bill for each service provided and are paid by the Division for services as described in the Division provider rules. Certain services are covered but are not provided by PHPs or by PCMs. The client may seek such services from an appropriate FFS provider. PCMs provide primary care services on a FFS basis and may refer PCM members to specialists and other providers for FFS care. In some parts of the state, the State may not enter into contracts with any managed care providers. OHP clients in these areas will receive all services from FFS providers.

(55) FPL – Federal Poverty Level

(56) Free-Standing Mental Health Organization (MHO) – The single MHO in each county that provides only mental health services and is not affiliated with an FCHP for that service area. In most cases this "carve-out" MHO is a county CMHP or a consortium of CMHPs, but may be a private behavioral health care company.

(57) Fully-Capitated Health Plan (FCHP) – PHPs that contract with the Division to provide capitated services under the OHP. The distinguishing characteristic of FCHPs is the coverage of hospital inpatient services.

(58) Fully Dual Eligible – For the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by the Division for full medical assistance coverage. The covered categories include Qualified Medicare Beneficiary (QMB) plus OHP with limited drug benefit package (system identifier BMM) and OHP with limited drug benefit package (system identifier BMD). The covered categories do not include OHP Plus benefit package; OHP Standard benefit package; QMB only; Specified Limited Medicare Beneficiary (SLMB/SMB) and SLMB with a Federal match aka Qualified Individual (SMF)

(59) Grievance – A Division member's or representative's expression of dissatisfaction to contractor or to a participating provider about any matter other than an action.

(60) Grievance System – The overall system that includes complaints and appeals handled at the PHP level and access to the State fair hearing process. Possible subjects for grievances include, but are not limited to, the quality of care or services provided and aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the Division member's rights.

(61) Health Care Professionals – Persons with current and appropriate licensure, certification, or accreditation in a medical, mental health or dental profession, which include but are not limited to: medical doctors (including psychiatrists), osteopathic physicians, pharmacists, psychologists, registered nurses, nurse practitioners, licensed practical nurses, certified medical assistants, licensed physicians assistants (PA), qualified mental health professionals (QMHPs), and qualified mental health associates (QMHAS), dentists, dental hygienists, limited access permit (LAP), denturists, and certified dental assistants. These professionals may conduct



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health, mental health or dental assessments of Division members and provide screening services to OHP clients within their scope of practice, licensure or certification.

(62) Health Insurance Portability and Accountability Act (HIPAA) of 1996 – HIPAA is a federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(63) Health Plan New/noncategorical client (HPN) – A person who is 19 years of age or older, is not pregnant, is not receiving Medicaid through another program and who must meet eligibility requirements in OAR 461-136-1100(2), in addition to all other OHP eligibility requirements to become an OHP client.

(64) Health Services Commission – An eleven member commission that is charged with reporting to the Governor the ranking of health benefits from most to least important, and representing the comparable benefits of each service to the entire population to be served.

(65) Hospice Services – A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare and/or accredited by the Oregon Hospice Association, is listed in the Hospice Program Registry, and has a valid provider agreement.

(66) Hospital Hold – A hospital hold is a process that allows a hospital to assist an individual admitted to the hospital for an inpatient hospital stay to secure a date of request when the individual is unable to apply for the OHP due to inpatient hospitalization. OHP clients shall be exempted from mandatory enrollment with an FCHP if clients become eligible through a hospital hold process and are placed in the adults/couples category.

(67) Indian Health Care Provider – An Indian health program or an urban Indian organization.

(68) Indian Health Program – An Indian health service facility, any federally recognized tribe or tribal organization or any tribe 638 FQHC enrolled with the Department as an American Indian/Alaska Native (AI/AN) provider.

(69) Line Items – condition/treatment pairs or categories of services included at specific lines in the Prioritized List of Services developed by the Health Services Commission for the OHP Medicaid Demonstration Project.

(70) Local and Regional Allied Agencies include the following: local Mental Health Authority; CMHPs; local DHS offices; Commission on Children and Families; OYA; Department of Corrections; Housing Authorities; local health departments, including WIC Programs; local schools; special education programs; law enforcement agencies; adult and juvenile criminal justices; developmental disability services; chemical dependency providers; residential providers; state hospitals, and other PHPs.

(71) Marketing – Any communication from a PHP to an OHP client not enrolled in that PHP which can reasonably be interpreted as an attempt to influence the OHP client:

- (a) To enroll in that particular PHP;
- (b) To either disenroll or not to enroll with another PHP.

(72) Marketing Materials – Any medium produced by, or on behalf of, a PHP that can reasonably be interpreted as intended for marketing as defined in this rule.

(73) Medicaid – A federal and state funded portion of the Medical Assistance Program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by DHS.

(74) Medical Assistance Program – A program for payment of health care provided to eligible Oregonians. Oregon's Medical Assistance Program includes Medicaid services including the OHP Medicaid Demonstration, and CHIP. The Medical Assistance Program is administered and coordinated by the Division of Medical Assistance, a section of the Department of Human Services.

(75) Medical Care Identification – The preferred term for what is commonly called the “medical card” That is the size of a business card and issued to Medical Assistance Program clients.

(76) Medical Case Management Services – Services provided to ensure that Division members obtain health care services necessary to maintain physical and emotional development and health. Medical case management services include a comprehensive, ongoing assessment of medical and/or dental needs plus the development and implementation of a plan to obtain needed medical or dental services that are capitated services or non-capitated services, and follow-up, as appropriate, to assess the impact of care.

(77) Medically Appropriate – Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

- (a) Consistent with the symptoms of a health condition or treatment of a health condition;
- (b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;
- (c) Not solely for the convenience of an OHP client or a provider of the service or medical supplies; and
- (d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a Division member or PCM member in the PHP's or PCM's judgment.

(78) Medicare – The federal health insurance program for the aged and disabled administered by CMS under Title XVIII of the Social Security Act.

(79) Medicare Advantage – An organization approved by CMS to offer Medicare health benefits plans to Medicare beneficiaries.

(80) Mental Health Assessment – The determination of a Division member's need for mental health services. A Qualified Mental Health Professional collects and evaluates data pertinent to a member's mental status, psychosocial history and current problems through interview, observation and testing.

(81) Mental Health Case Management – Services provided to Division member's who require assistance to ensure access to benefits and services from local, regional or state allied agencies or other service providers. Services provided may include: advocating for the Division member's treatment needs; providing assistance in obtaining entitlements based on mental or emotional disability; referring Division member's to needed services or supports; accessing housing or residential programs; coordinating services, including educational or vocational activities; and establishing alternatives to inpatient psychiatric services. ENCC Services are separate and distinct from Mental Health Case Management.

(82) Mental Health Organization (MHO) – A PHP under contract with AMH that provides mental health services as capitated services under the OHP. MHOs can be FCHPs, CMHPs or private behavioral organizations or combinations thereof.

(83) National Drug Code or (NDC) – A universal number that identifies a drug. The NDC number consists of 11 digits in a 5-4-2 format. The first five digits identify the manufacturer of the drug and are assigned by the Food and Drug Administration. The remaining digits are assigned by the manufacturer and identify the specific product and package size. Some packages will display less than 11 digits, but leading zeroes can be assumed and need to be used when billing

(84) National Provider Identifier (NPI) – A federally directed provider number mandated for use on Health Insurance Portability and Accountability Act (HIPAA) transactions; individuals, provider organizations and subparts of provider organizations that meet the definition of health care providers (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.(85) Non-Capitated Services – Those OHP-covered services paid for on a FFS basis and for which a capitation payment has not been made to a PHP.

(86) Non-Covered Services – Services or items for which the Division is not responsible for payment. Services may be covered under the Oregon Medical Assistance Program, but not covered under the OHP. Non-covered services for the OHP are identified in:

- (a) OAR 410-141-0500;
- (b) Exclusions and limitations described in OAR 410-120-1200; and
- (c) Individual provider administrative rules.

(87) Non-Participating Provider – A provider that does not have a contractual relationship with the PHP, i.e. is not on their panel of providers.

(88) Ombudsman Services – Ombudsman Services – Services provided by the Department to OHP client's who are aged, blind or disabled who have complex medical needs. Ombudsman staff may serve as the OHP client's advocate whenever the OHP client (a representative, a physician or other medical personnel, or other personal advocate serving the OHP client) is reasonably concerned about access to, quality of or limitations on the care being provided by a health care provider under the OHP. Ombudsman services include response to individual complaints about access to care, quality of care or limits to care; and response to complaints about OHP systems.

(89) Oregon Health Plan (OHP) – The Medicaid and Children's Health Insurance (CHIP) Demonstration Project which expands Medicaid and CHIP eligibility to eligible OHP clients. The OHP relies substantially

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upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(90) Oregon Health Plan (OHP) Plus Benefit Package – A benefit package available to eligible OHP clients as described in OAR 410-120-1210.

(91) Oregon Health Plan (OHP) Standard Benefit Package – A benefit package available to eligible OHP clients who are not otherwise eligible for Medicaid (including families, adults and couples) as described in OAR 410-120-1210.

(92) Oregon Health Plan (OHP) client – An individual found eligible by the Department to receive services under the OHP. The OHP categories eligible for enrollment are defined as follows:

(a) Temporary Assistance to Needy Families (TANF) – OHP clients categorically eligible with income under current eligibility rules;

(b) CHIP – Children under one year of age who have income under 185% FPL and do not meet one of the other eligibility classifications;

(c) Poverty Level Medical (PLM) Adults under 100% of the FPL are OHP clients who are pregnant women with income under 100% of FPL;

(d) PLM Adults over 100% of the FPL are OHP clients who are pregnant women with income between 100% and 185% of the FPL;

(e) PLM children under one year of age have family income under 133% of the FPL or were born to mothers who were eligible as PLM Adults at the time of the child's birth;

(f) PLM or CHIP children one through five years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(g) PLM or CHIP children six through eighteen years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;

(h) OHP adults and couples are OHP clients aged 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP families are OHP clients, aged 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) recipients are OHP clients who are eligible by virtue of their eligibility under the Oregon General Assistance program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare eligibles are OHP clients with concurrent Medicare eligibility with income under current eligibility rules;

(l) AB/AD without Medicare eligibles are OHP clients without Medicare with income under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare eligibles are OHP clients with concurrent Medicare Part A or Medicare Parts A & B eligibility with income under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare eligibles are OHP clients without Medicare with income under current eligibility rules;

(p) CAF Children are OHP clients who are children with medical eligibility determined by CAF or OYA receiving OHP under ORS 414.025(2)(f), (l), (j), (k) and (o), 418.034 and 418.187 to 418.970. These individuals are generally in the care and/or custody of CAF or OYA who are in placement outside of their homes.

(93) Oregon Youth Authority (OYA) – The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(94) Participating Provider – An individual, facility, corporate entity, or other organization which supplies medical, dental, chemical dependency services, or mental health services or medical and dental items and that has agreed to provide those services or items to Division members under an agreement or contract with a PHP and to bill in accordance with the signed agreement or contract with a PHP.

(95) PCM Case Managed Services include the following: Preventive services, primary care services and specialty services, including those provided by physicians, nurse practitioners, physician assistants, naturopaths, chiropractors, podiatrists, rural health clinics (RHC), migrant and community health clinics, federally qualified health centers (FQHC), county health departments, Indian health service clinics and Tribal health clinics,

CMHPs, MHOs; inpatient hospital services; and outpatient hospital services except laboratory, X-ray, and maternity management services.

(96) PCM Member – An OHP client enrolled with a PCM

(97) PHP Coordinator – the Division employee designated by the Division as the liaison between the Division and the PHP.

(98) Physician Care Organization (PCO) – PHP that contracts with the Division to provide partially capitated health services under the OHP. The distinguishing characteristic of a PCO is the exclusion of inpatient hospital services.

(99) Post Hospital Extended Care Benefit – A 20-day benefit for non-Medicare Division members enrolled in a FCHP who meet Medicare criteria for a post-hospital skilled nursing placement.

(100) Post Stabilization Services – covered services, related to an emergency medical condition that is provided after a Division member is stabilized in order to maintain the stabilized condition or to improve or resolve the Division member's condition.

(101) Potential DMAP member – An OHP client who is subject to mandatory enrollment in managed care, or may voluntarily elect to enroll in a managed care program, but is not yet enrolled with a specific PHP.

(102) Practitioner – A person licensed pursuant to State law to engage in the provision of health care services within the scope of the practitioner's license and/or certification.

(103) Prepaid Health Plan (PHP) – A managed health, dental, chemical dependency, physician care organization, or mental health care organization that contracts with the Division and/or AMH on a case managed, prepaid, capitated basis under the OHP. PHPs may be DCOs, FCHPs, MHOs, PCOs or CDOs.

(104) Preventive Services – Those services as defined under expanded definition of preventive services for OHP clients in OAR 410-141-0480, and OAR 410-141-0520.

(105) Primary Care Management Services – Primary care management services are services provided to ensure PCM members obtain health care services necessary to maintain physical and emotional development and health. Primary care management services include a comprehensive, ongoing assessment of medical needs plus the development, and implementation of a plan to obtain needed medical services that are preventive or primary care services or PCM case managed services and follow-up, as appropriate, to assess the impact of care.

(106) Primary Care Manager (PCM) – A physician (MD or DO), nurse practitioner, physician assistant; or naturopath with physician backups, who agrees to provide primary care management services as defined in rule to PCM members. PCMs may also be hospital primary care clinics, RHCs, migrant and community health clinics, FQHCs, county health departments, Indian health service clinics or Tribal health clinics. The PCM provides Primary Care Management Services to PCM members for a capitation payment. The PCM provides preventive and primary care services on a FFS basis.

(107) Primary Care Dentist (PCD) – A Dental practitioner who is responsible for supervising and coordinating initial and primary dental care within their scope of practice for Division members. PCDs initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of appropriate dental or medical care.

(108) Primary Care Provider (PCP) – A practitioner who has responsibility for supervising and coordinating initial and primary care within their scope of practice for Division members. PCPs initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of appropriate dental or medical care.

(109) Prioritized List of Health Services – The listing of condition and treatment pairs developed by the Health Services Commission for the purpose of implementing the OHP Demonstration Project. See OAR 410-141-0520, for the listing of condition and treatment pairs.

(110) Professional Liability Insurance – Coverage under the Federal Tort Claims Act (the "FTCA") if contractor is deemed covered under the FTCA, and to the extent the FTCA covers contractor's professional liability under this contract

(111) Proof of Indian Heritage – Proof of Native American and/or Alaska Native descent as evidenced by written identification that shows status as an "Indian" in accordance with the Indian Health Care Improvement Act (P.L. 94-437, as amended). This written proof supports his/her eligibility for services under programs of the Indian Health Service – services provided by Indian health service facilities, tribal health clinics/programs or urban clinics. Written proof may be a tribal identification card, a certificate of degree of Indian blood, or a letter from the Indian Health Service verifying eligibility for health care through programs of the Indian Health Service.

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(112) Provider – An individual, facility, institution, corporate entity or other organization which supplies medical, dental or mental health services or medical and dental items.

(113) Provider Taxonomy Codes: is a standard administrative code set, as defined under HIPAA in federal regulations at 45 CFR 162, for identifying the provider type and area of specialization for all providers.

(114) Quality Improvement – Quality improvement is the effort to improve the level of performance of a key process or processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality Improvement (as used in these rules) includes the goals of quality assurance, quality control, quality planning and quality management in health care where “quality of care is the degree to which health services for individuals and populations increases the likelihood of desired health outcomes and are consistent with current professional knowledge.”

(115) Representative – A person who can make OHP related decisions for OHP clients who are not able to make such decisions themselves. A representative may be, in the following order of priority, a person who is designated as the OHP client’s health care representative, a court-appointed guardian, a spouse, or other family member as designated by the OHP client, the Individual Service Plan Team (for developmentally disabled clients), a Department case manager or other Department designee.

(116) Rural – A geographic area is 10 or more map miles from a population center of 30,000 people or less.

(117) Seniors and People with Disabilities Division (SPD) – The division within the Department responsible for providing services such as:

(a) Assistance with the cost of long-term care through the Medicaid Long Term Care Program and the Oregon Project Independence (OPI) Program;

(b) Cash assistance grants for persons with long-term disabilities through GA and the Oregon Supplemental Income Program (OSIP); and

(c) Administration of the federal Older Americans Act.

(118) Service Area – The geographic area the PHP has identified in their Contract or Agreement with the Department, to provide services under the OHP.

(119) Stabilize – No material deterioration of the emergency medical condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility.

(120) Terminal Illness – An illness or injury in which death is imminent irrespective of treatment, where the application of life-sustaining procedures or the artificial administration of nutrition and hydration serves only to postpone the moment of death.

(121) Triage – Evaluations conducted to determine whether or not an emergency condition exists, and to direct the Division member to the most appropriate setting for medically appropriate care.

(122) Urban – A geographic area is less than 10 map miles from a population center of 30,000 people or more.

(123) Urgent Care Services – Covered services that are medically appropriate and immediately required to prevent serious deterioration of a Division member’s health that is a result of unforeseen illness or injury. Services that can be foreseen by the individual are not considered urgent services.

(124) Valid Claim:

(a) An invoice received by the PHP for payment of covered health care services rendered to an eligible client that:

(A) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(B) Has been received within the time limitations prescribed in these rules.

(b) A valid claim does not include a claim from a provider who is under investigation for fraud or abuse, or a claim under review for medical appropriateness. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

(125) Valid Pre-Authorization – A request received by the PHP for approval of the provision of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(b) Has been received within the time limitations prescribed in these rules.

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

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

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 13-2002, f. & cert.

ef. 4-1-02; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 50-2003, f. 7-31-03, cert. ef. 8-1-03; OMAP 37-2004(Temp), f. 5-27-04, cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04, cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-141-0070

### Managed Care Fully Capitated Health Plan and Physician Care Organization Pharmaceutical Drug List Requirements

(1) Prescription drugs are a covered service based on the funded Condition/Treatment Pairs. Fully Capitated Health Plan (FCHP)’s and Physician Care Organization (PCO)’s shall pay for prescription drugs, except:

(a) As otherwise provided, such as Class 7 & 11 medications (based on the National Drug Code (NDC) as submitted by the manufacturer to First Data Bank);

(b) Depakote, Lamictal and those drugs that the Division specifically carved out from capitation according to sections (8) through (11) of this rule;

(c) Any applicable co-payments;

(d) For drugs covered under Medicare Part D when the client is Fully Dual Eligible

(2) FCHPs and PCOs may use a restrictive drug list as long as it allows access to other drug products not on the drug list through some process such as prior authorization (PA). The drug list must:

(a) Include Federal Drug Administration (FDA) approved drug products for each therapeutic class sufficient to ensure the availability of covered drugs with minimal prior approval intervention by the provider of pharmaceutical services;

(b) Include at least one item in each therapeutic class of over-the-counter medications; and

(c) Be revised periodically to assure compliance with this requirement.

(3) FCHPs and PCOs shall provide their participating providers and their pharmacy subcontractor with:

(a) Their drug list and information about how to make non-drug listed requests;

(b) Updates made to their drug list within 30 days of a change that may include, but is not limited to:

(A) Addition of a new drug;

(B) Removal of a previously listed drug; and

(C) Generic substitution.

(4) If a drug cannot be approved within the 72-hour time requirement for prior authorization of drugs and the medical need for the drug is immediate, FCHPs and PCOs must provide (within 24 hours of receipt of the drug prior authorization request) for the dispensing of at least a 72-hour supply of a drug that requires prior authorization

(5) FCHPs and PCOs shall authorize the provision of a drug requested by the Primary Care Physician (PCP) or referring provider, if the approved prescriber certifies medical necessity for the drug such as:

(a) The equivalent of the drug listed has been ineffective in treatment; or

(b) The drug listed causes or is reasonably expected to cause adverse or harmful reactions to the Division member.

(6) Prescriptions for Physician Assisted Suicide under the Oregon Death with Dignity Act are excluded; payment is governed solely by OAR 410-121-0150.

(7) FCHPs and PCOs shall not authorize payment for any Drug Efficacy Study Implementation (DESI) Less Than Effective (LTE) drugs which have reached the FDA Notice of Opportunity for Hearing (NOOH) stage, as specified in OAR 410-121-0420 (DESI)(LTE) Drug List. The DESI LTE drug list is available at <http://www.cms.hhs.gov/MedicaidDrugRebateProgram/12LTEIRSDrugs.asp>.

(8) The Division may exclude (commonly called “carve out”) drugs from FCHP and PCO capitation that are FDA approved to treat a serious mental health disorder, such as major depressive, bi-polar and schizophrenic disorders.

(9) In order for a drug to be considered for carve out from FCHP and PCO capitation for the January contract period, the Division must receive the request for carve out from the FCHP or PCO no later than March 1 of the previous calendar year to be considered for carve out for the following January contract cycle. The request must include:

(a) The drug name;



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(b) The FDA approved indications that include an FDA approved use to treat a severe mental health condition; and

(c) The reason that the Division should consider this drug for carve out.

(10) The Division determines whether or not to carve out a drug.

(11) The Division will pay for a drug that is subject to carve out pursuant to the Pharmaceutical Services rules (chapter 410, division 121). An FCHP or PCO may not reimburse providers for carved out drugs.

(12) FCHPs and PCOs shall submit quarterly utilization data, within 60 days of the date of service, as part of the CMS Medicaid Drug Rebate Program requirements pursuant to Section 2501 of the Affordable Care Act.

Stat. Auth.: ORS 409.050

Stats. Implemented: 414.065

Hist.: OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05;

OMAP 57-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06;

OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07;

DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-141-0080

### Managed Care Disenrollment from Prepaid Health Plans

(1) Division member requests for disenrollment:

(a) All Oregon Health Plan (OHP) Division member-initiated requests for disenrollment from a Prepaid Health Plan (PHP) must be initiated, orally or in writing, by the primary person in the benefit group enrolled with a PHP, where primary person and benefit group are defined in OAR 461-110-0110 and 461-110-0720, respectively. For Division members who are not able to request disenrollment on their own, the request may be initiated by the Division member's Representative;

(b) Primary person or Representative requests for disenrollment shall be honored:

(A) Without cause:

(i) After six months of Division member's enrollment. The effective date of disenrollment shall be the first of the month following the Department's approval of disenrollment;

(ii) Whenever a Division member's eligibility is redetermined by the Department of Human Services (Department) and the primary person requests disenrollment without cause. The effective date of disenrollment shall be the first of the month following the date that the Division member's eligibility is redetermined by the Department;

(B) With cause:

(i) At any time;

(ii) Division members who disenroll from a Medicare Advantage plan shall also be disenrolled from the corresponding Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). The effective date of disenrollment shall be the first of the month that the Division member's Medicare Advantage plan disenrollment is effective;

(iii) Division members who are receiving Medicare and who are enrolled in a FCHP or PCO that has a corresponding Medicare Advantage component may disenroll from the FCHP or PCO at any time if they also request disenrollment from the Medicare Advantage plan. The effective date of disenrollment from the FCHP or PCO shall be the first of the month following the date of request for disenrollment;

(iv) PHP does not, because of moral or religious objections, cover the service the Division member seeks;

(v) The Division member needs related services (for example a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the Division members' Primary Care Provider or another Provider determines that receiving the services separately would subject the Division member to unnecessary risk; or

(vi) Other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to Participating Providers experienced in dealing with the Division member's health care needs. Examples of sufficient cause include but are not limited to:

(I) The Division member moves out of the PHP's Service Area;

(II) The Division member is a Native American or Alaskan Native with Proof of Indian Heritage who wishes to obtain primary care services from his or her Indian Health Service facility, tribal health clinic/program or urban clinic and the Fee-For-Service (FFS) delivery system;

(III) Continuity of care that is not in conflict with any section of 410-141-0060 or this rule. Participation in the Oregon Health Plan, including managed care, does not guarantee that any Oregon Health Plan client has a right to continued care or treatment by a specific provider. A request for disenrollment based on continuity of care will be denied if the basis for this request is primarily for the convenience of an Oregon Health Plan client or

a provider of a treatment, service or supply, including but not limited to a decision of a provider to participate or decline to participate in a PHP.

(C) If the following conditions are met:

(i) The applicant is in the third trimester of her pregnancy and has just been determined eligible for OHP, or the OHP client has just been re-determined eligible and was not enrolled in a FCHP or PCO within the past 3 months; and

(ii) The new FCHP or PCO the Division member is enrolled with does not contract with the Division member's current OB Provider and the Division member wishes to continue obtaining maternity services from that Non-Participating OB Provider; and

(iii) The request to change FCHPs, PCOs or return to FFS is made prior to the date of delivery.

(c) In addition to the disenrollment constraints listed in (b), above, Division member disenrollment requests are subject to the following requirements:

(A) The Division member shall join another PHP, unless the Division member resides in a Service Area where enrollment is voluntary, or the Division member meets the exemptions to enrollment as stated in 410-141-0060(4);

(B) If the only PHP available in a mandatory Service Area is the PHP from which the Division member wishes to disenroll, the Division member may not disenroll without cause;

(C) The effective date of disenrollment shall be the end of the month in which disenrollment was requested unless retroactive disenrollment is approved by the Division;

(D) If the Department fails to make a disenrollment determination by the first day of the second month following the month in which the Division member files a request for disenrollment, the disenrollment is considered approved.

(2) Prepaid Health Plan requests for disenrollment:

(a) Causes for disenrollment:

(A) The Division may disenroll Division members for cause when requested by the PHP, subject to American with Disabilities Act requirements. Examples of cause include, but are not limited to the following:

(i) Missed appointments. The number of missed appointments is to be established by the Provider or PHP. The number must be the same as for commercial members or patients. The Provider must document they have attempted to ascertain the reasons for the missed appointments and to assist the Division member in receiving services. This rule does not apply to Medicare members who are enrolled in a FCHP's or PCO's Medicare Advantage plan;

(ii) Division member's behavior is disruptive, unruly, or abusive to the point that his/her continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either the Division member or other members, subject to the requirements in (2)(a)(B)(vii);

(iii) Division member commits or threatens an act of physical violence directed at a medical Provider or property, the Provider's staff, or other patients, or the PHP's staff to the point that his/her continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this particular Division member or other Division members, subject to the requirements in (2)(a)(B)(vii);

(iv) Division member commits fraudulent or illegal acts such as: permitting use of his/her medical ID card by others, altering a prescription, theft or other criminal acts (other than those addressed in (2)(a)(A)(ii) or (iii)) committed in any Provider or PHP's premises. The PHP shall report any illegal acts to law enforcement authorities or to the office for Children, Adults and Families (CAF) Fraud Unit as appropriate;

(v) OHP clients who have been exempted from mandatory enrollment with a FCHP or PCO, due to the OHP client's eligibility through a hospital hold process and placed in the Adults/Couples category as required under 410-141-0060(4)(b)(F);

(vi) Division member fails to pay co-payment(s) for Covered Services as described in OAR 410-120-1230.

(B) Division members shall not be disenrolled solely for the following reasons:

(i) Because of a physical or mental disability;

(ii) Because of an adverse change in the Division member's health;

(iii) Because of the Division member's utilization of services, either excessive or lack thereof;

(iv) Because the Division member requests a hearing;

(v) Because the Division member has been diagnosed with End Stage Renal Disease (ESRD);

(vi) Because the Division member exercises his/her option to make decisions regarding his/her medical care with which the PHP disagrees;

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(vii) Because of uncooperative or disruptive behavior, including but not limited to threats or acts of physical violence, resulting from the Division member's special needs (except when continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this Division member or other members).

(C) Requests by the PHP for disenrollment of specific Division members shall be submitted in writing to their PHP Coordinator for approval. The PHP must document the reasons for the request, provide written evidence to support the basis for the request, and document that attempts at intervention were made as described below. The procedures cited below must be followed prior to requesting disenrollment of a Division member:

(i) There shall be notification from the Provider to the PHP at the time the problem is identified. The notification must describe the problem and allow time for appropriate intervention by the PHP. Such notification shall be documented in the Division member's Clinical Record. The PHP shall conduct Provider education regarding the need for early intervention and the services they can offer the Provider;

(ii) The PHP shall contact the Division member either verbally or in writing, depending on the severity of the problem, to inform the Division member of the problem that has been identified, and attempt to develop an agreement with the Division member regarding the issue(s). If contact is verbal, it shall be documented in the Division member's record. The PHP shall inform the Division member that his/her continued behavior may result in disenrollment from the PHP;

(iii) The PHP shall provide individual education, counseling, and/or other interventions with the Division member in a serious effort to resolve the problem;

(iv) The PHP shall contact the Division member's Department caseworker regarding the problem and, if needed, involve the caseworker and other appropriate agencies' caseworkers in the resolution, within the laws governing confidentiality;

(v) If the severity of the problem and intervention warrants, the PHP shall develop a care plan that details how the problem is going to be addressed and/or coordinate a case conference. Involvement of the Provider, caseworker, Division member, family, and other appropriate agencies is encouraged. If necessary, the PHP shall obtain an authorization for release of information from the Division member for the Providers and agencies in order to involve them in the resolution of the problem. If the release is verbal, it must be documented in the Division member's record;

(vi) Any additional information or assessments requested by the Division PHP Coordinator;

(vii) If the Division member's behavior is uncooperative or disruptive, including but not limited to threats or acts of physical violence, as the result of his/her special needs or disability, the PHP must also document each of the following:

(I) A written assessment of the relationship of the behavior to the special needs or disability of the individual and whether the individual's behavior poses a direct threat to the health or safety of others. Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures. In determining whether a Division member poses a direct threat to the health or safety of others, the PHP must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or best available objective evidence to ascertain the nature, duration and severity of the risk to the health or safety of others; the probability that potential injury to others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk to others;

(II) A PHP-staffed interdisciplinary team review that includes a mental health professional or behavioral specialist or other health care professionals who have the appropriate clinical expertise in treating the Division member's condition to assess the behavior, the behavioral history, and previous history of efforts to manage behavior;

(III) If warranted, a clinical assessment of whether the behavior will respond to reasonable clinical or social interventions;

(IV) Documentation of any accommodations that have been attempted;

(V) Documentation of the PHP's rationale for concluding that the Division member's continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this particular Division member or other members.

(viii) If a Primary Care Provider (PCP) terminates the Provider/patient relationship, the PHP shall attempt to locate another PCP on their panel who will accept the Division member as their patient. If needed, the PHP shall obtain an authorization for release of information from the Division member in order to share the information necessary for a

new Provider to evaluate if they can treat the Division member. All terminations of Provider/patient relationships shall be according to the PHP's policies and must be consistent with PHP or PCP's policies for commercial members.

(D) Requests will be reviewed according to the following process:

(i) If there is sufficient documentation, the request will be evaluated by the PHP's Coordinator or a team of PHP Coordinators who may request additional information from Ombudsman Services, AMH or other agencies as needed; If the request involves the Division member's mental health condition or behaviors related to substance abuse, the PHP Coordinator should also confer with the OHP Coordinator in AMH;

(ii) If there is not sufficient documentation, the PHP Coordinator will notify the PHP within 2 business days of what additional documentation is required before the request can be considered;

(iii) The PHP Coordinators will review the request and notify the PHP of the decision within ten working days of receipt of sufficient documentation from the PHP. Written decisions, including reasons for denials, will be sent to the PHP within 15 working days from receipt of request and sufficient documentation from the PHP.

(E) If the request is approved the PHP Coordinator must send the Division member a letter within 14 days after the request was approved, with a copy to the PHP, the Division member's Department caseworker and Division's Health Management Unit (HMU). The letter must give the disenrollment date, the reason for disenrollment, and the notice of Division member's right to file a Complaint (as specified in 410-141-0260 through 410-141-0266) and to request an Administrative Hearing. If the Division member requests a hearing, the Division member will continue to be disenrolled until a hearing decision reversing that disenrollment has been sent to the Division member and the PHP:

(i) In cases where the Division member is also enrolled in the FCHP's or PCO's Medicare Advantage plan and the plan has received permission to disenroll the client, the FCHP or PCO will provide proof of the CMS approval to disenroll the client and the date of disenrollment shall be the date approved by CMS;

(ii) The disenrollment date is 30 days after the date of approval, except as provided in subsections (iii) and (iv) of this section:

(I) The PHP Coordinator will determine when enrollment in another PHP or with a PCM is appropriate. If appropriate, the PHP Coordinator will contact the Division member's Department caseworker to arrange enrollment. The Division may require the Division member and/or the benefit group to obtain services from FFS Providers or a PCM until such time as they can be enrolled in another PHP;

(II) When the disenrollment date has been determined, HMU will send a letter to the Division member with a copy to the Division member's Department caseworker and the PHP. The letter shall inform the Division member of the requirement to be enrolled in another PHP, if applicable.

(iii) If the PHP Coordinator approves a PHP's request for disenrollment because of the Division member's uncooperative or disruptive behavior, including threats or acts of physical violence directed at a medical Provider, the Provider's staff, or other patients, or because the Division member commits fraudulent or illegal acts as stated in 410-141-0080(2)(a), the following additional procedures shall apply:

(I) The Division member shall be disenrolled as of the date of the PHP's request for disenrollment;

(II) All Division members in the Division member's benefit group, as defined in OAR 461-110-0720, may be disenrolled if the PHP requests;

(III) At the time of enrollment into another PHP, the Division shall notify the new PHP that the Division member and/or benefit group were previously disenrolled from another PHP at that PHP's request.

(iv) If a Division member who has been disenrolled for cause is reenrolled in the PHP, the PHP may request a disenrollment review by the PHP's PHP Coordinator. A Division member may not be disenrolled from the same PHP for a period of more than 12 months. If the Division member is reenrolled after the 12-month period and is again disenrolled for cause, the disenrollment will be reviewed by the Department for further action.

(b) Other reasons for the PHP's requests for disenrollment include the following:

(A) If the Division member is enrolled in the FCHP or MHO on the same day the Division member is admitted to the hospital, the FCHP or MHO shall be responsible for said hospitalization. If the Division member is enrolled after the first day of the inpatient stay, the Division member shall be disenrolled, and the date of enrollment shall be the next available enrollment date following discharge from inpatient hospital services;

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(B) The Division member has surgery scheduled at the time their enrollment is effective with the PHP, the Provider is not on the PHP's Provider panel, and the Division member wishes to have the services performed by that Provider;

(C) The Medicare member is enrolled in a Medicare Advantage plan and was receiving Hospice Services at the time of enrollment in the PHP;

(D) The Division member had End Stage Renal Disease at the time of enrollment in the PHP;

(E) Excluding the DCO, the PHP determines that the Division member has a third party insurer. If after contacting The Health Insurance Group, the disenrollment is not effective the following month, the PHP may contact HMU to request disenrollment;

(F) If a PHP has knowledge of a Division member's change of address, the bPHP shall notify the Department. The Department will verify the address information and disenroll the Division member from the PHP, if the Division member no longer resides in the PHP's Service Area. Division members shall be disenrolled if out of the PHP's Service Area for more than three (3) months, unless previously arranged with the PHP. The effective date of disenrollment shall be the date specified by the Division and the Division will recoup the balance of that month's Capitation Payment from the PHP;

(G) The Division member is an inmate who is serving time for a criminal offense or confined involuntarily in a State or Federal prison, jail, detention facility, or other penal institution. This does not include Division members on probation, house arrest, living voluntarily in a facility after their case has been adjudicated, infants living with an inmate, or inmates who become inpatients. The PHP is responsible for identifying the Division members and providing sufficient proof of incarceration to HMU for review of the disenrollment request. The Division will approve requests for disenrollment from PHPs for Division members who have been incarcerated for at least fourteen (14) calendar days and are currently incarcerated. FCHPs are responsible for inpatient services only during the time a Division member was an inmate;

(H) The Division member is in a state psychiatric institution.

(3) The Division Initiated disenrollments:

(a) The Division may initiate and disenroll Division members as follows:

(A) If the Division determines that the Division member has sufficient third party resources such that health care and services may be cost effectively provided on a FFS basis, the Division may disenroll the Division member. The effective date of disenrollment shall be the end of the month in which the Division makes such a determination. The Division may specify a retroactive effective date of disenrollment if the Division member's third party coverage is through the PHP, or in other situations agreed to by the PHP and the Division;

(B) If the Division member moves out of the PHP's Service Area(s), the effective date of disenrollment shall be the date specified by the Division and the Division will recoup the balance of that month's Capitation Payment from the PHP;

(C) If the Division member is no longer eligible under the Oregon Health Plan Medicaid Demonstration Project or Children's Health Insurance Program, the effective date of disenrollment shall be the date specified by the Division;

(D) If the Division member dies, the effective date of disenrollment shall be through the date of death;

(E) When a non-Medicare contracting PHP is assumed by another PHP that is a Medicare Advantage plan, Division members with Medicare shall be disenrolled from the existing PHP. The effective date of disenrollment shall be the day prior to the month the new PHP assumes the existing PHP;

(F) If the Division determines that the PHP's Division member has enrolled with their Employer Sponsored Insurance (ESI) through FHIAP the effective date of the disenrollment shall be the Division member's effective date of coverage with FHIAP.

(b) Unless specified otherwise in these rules or in the Division notification of disenrollment to the PHP, all disenrollments are effective the end of the month after the request for disenrollment is approved by the Division;

(c) The Division shall inform the Division members of the disenrollment decision in writing, including the right to request an Administrative Hearing. Oregon Health Plan clients may request a DMAP hearing if they dispute a disenrollment decision by the Division;

(d) If the OHP client requests a hearing, the OHP client will continue to be disenrolled until a hearing decision reversing that disenrollment is sent the OHP client.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 33-1994, f. & cert. ef. 11-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 21-1996(Temp), f. & cert. ef. 11-1-96; HR 11-1997, f. 3-28-97, cert. ef. 4-1-97; HR 14-1997, f. & cert. ef. 7-1-97; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 49-1998(Temp), f. 12-31-98, cert. ef. 1-1-99 thru 6-30-99; Administrative correction 8-9-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-141-0120

### Managed Care Prepaid Health Plan Provision of Health Care Services

Managed Care Prepaid Health Plan (PHP) Provision of Health Care Services

CAF: Children, Adults and Families

CMS: Centers for Medicare and Medicaid Services

Department: Department of Human Services

FCHP: Fully Capitated Health Plans

MHO: Mental Health Organization

OHP: Oregon Health Plan

Division: Division of Medical Assistance Programs

AMH: Addictions and Mental Health Division

PCO: Physician Care Organization

PCP: Primary Care Provider

PHP: Prepaid Health Plan

(1) PHPs shall have written policies and procedures that ensure the provision of all medically and dentally appropriate covered services, including urgent care services and emergency services, preventive services and Ancillary services, in those categories of services included in contract or agreements with the Division and Addictions and Mental Health Division (AMH). PHPs shall communicate these policies and procedures to providers, regularly monitor providers' compliance with these policies and procedures, and take any corrective action necessary to ensure provider compliance. PHPs shall document all monitoring and corrective action activities:

(a) PHPs shall ensure that all participating providers providing covered services to Division members are credentialed upon initial contract with the PHP and recertified no less frequently than every three years thereafter. The credentialing and recertification process shall include review of any information in the National Practitioners Databank and a determination, based on the requirements of the discipline or profession, that participating providers have current licensure in the state in which they practice, appropriate certification, applicable hospital privileges and appropriate malpractice insurance. This process shall include a review and determination based on the activity and results of a professional quality improvement review. PHPs may elect to contract for or to delegate responsibility for this process. PHPs shall accept both the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recertification Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPI) on September 28, 2004, thereby implementing ORS 442.807. PHPs shall retain responsibility for delegated activities, including oversight of the following processes:

(A) PHPs shall ensure that covered services are provided within the scope of license or certification of the participating provider or facility, and within the scope of the participating provider's contracted services and that participating providers are appropriately supervised according to their scope of practice;

(B) PHPs shall provide training for PHP staff and participating providers and their staff regarding the delivery of covered services, OHP administrative rules, and the PHP's administrative policies;

(C) PHPs shall maintain records documenting academic credentials, training received, licenses or certifications of staff and facilities used, and reports from the National Practitioner Data Bank and must provide accurate and timely information about license or certification expiration and renewal dates to the Division. PHPs shall not refer Division members to or use Providers who do not have a valid license or certification required by state or federal law. If a PHP knows or has reason to know that a provider's license or certification is expired or not renewed or is subject to licensing or certification sanction, the PHP must immediately notify the Division's Provider Services Unit.

(D) PHPs shall not refer Division members to or use providers who have been terminated from the Oregon Medical Assistance Program or excluded as Medicare/Medicaid providers by CMS or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101. PHPs shall not accept billings for services to Division members provided after the date of such provider's exclusion, conviction or termination. The Department has developed disclosure statement forms for individual practitioners and entities. If a PHP



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wishes to use their own disclosure statement form, they must submit to their PHP Coordinator for Department approval prior to use. PHPs must obtain information required on the appropriate disclosure form from individual practitioners and entities and must retain the disclosure statements in the PHP credential files. If a PHP knows or has reason to know that a provider has been convicted of a felony or misdemeanor related to a crime, or violation of federal or state laws under Medicare, Medicaid or Title XIX (including a plea of “nolo contendere”), the PHP must immediately notify the Division’s Provider Services Unit.

(E) PHPs must obtain and use the Division’s Provider enrollment (encounter) number for providers when submitting provider capacity reports. Only registered National Provider Identifiers (NPIs) and taxonomy codes are to be used for purposes of encounter data submission, prior to submitting encounter data in connection with services by the provider. Effective January 1, 2007, provider number “999999” may no longer be used in encounter data reporting or provider capacity reporting. PHPs must require each qualified provider to have and use a National Provider Identifier as enumerated by the National Plan and Provider Enumeration System (NPPES).

(F) The provider enrollment request (for encounter purposes) and disclosure statement described in paragraphs (D) and (E) require the disclosure of taxpayer identification numbers. The taxpayer identification number will be used for the administration of this program including provider enrollment, internal verification and administrative purposes for the medical assistance program, for administration of tax laws and may be used to confirm whether the individual or entity is subject to exclusion from participation in the medical assistance program. Taxpayer identification number includes Employer Identification Number (EIN), Social Security Number (SSN), Individual Tax Identification Number (ITIN) used to identify the individual or entity on the enrollment request form or disclosure statement. Disclosure of tax identification numbers for these purposes is mandatory. Failure to submit the requested taxpayer identification number(s) may result in denial of enrollment as a provider and denial of a provider number for encounter purposes, or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider for encounters.

(b) FCHPs, PCOs, DCOs and CDOs shall have written procedures that provide newly enrolled Division members with information about which participating providers are currently not accepting new patients (except for staff models);

(c) FCHPs, PCOs, DCOs and CDOs shall have written procedures that allow and encourage a choice of a PCP or clinic for physical health, and dental health services by each Division member. These procedures shall enable a Division member to choose a participating PCP or clinic (when a choice is available for PCPs or clinics) to provide services within the scope of practice to that Division member;

(d) If the Division member does not choose a PCP within 30 calendar days from the date of enrollment, the FCHP or PCO must ensure the Division member has an ongoing source of primary care appropriate to his or her needs by formally designating a practitioner or entity. FCHPs and PCOs that assign Division members to PCPs or clinics shall document the unsuccessful efforts to elicit the Division member’s choice before assigning a Division member to a PCP or clinic. FCHPs and PCOs who assign PCPs before 30 calendar days after enrollment, must notify the Division member of the assignment and allow the Division member 30 calendar days after assignment to change the assigned PCP or clinic.

(2) In order to make advantageous use of the system of public health services available through county health departments and other publicly supported programs and to ensure access to public health services through contract under ORS Chapter 414-153:

(a) Unless cause can be demonstrated to Division’s satisfaction why such an agreement is not feasible, FCHPs and PCOs shall execute agreements with publicly funded Providers for payment of point-of-contact services in the following categories:

- (A) Immunizations;
- (B) Sexually transmitted diseases; and
- (C) Other communicable diseases.

(b) Division members may receive the following services from appropriate non-participating Medicaid providers. If the following services are not referred by the FCHP or PCO in accordance with the FCHP’s or PCO’s referral process (except as provided for under 410-141-0420 Billing and Payment under the OHP), the Division is responsible for payment of such services:

- (A) Family planning services; and

(B) Human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) prevention services.

(c) FCHPs and PCOs are encouraged to execute agreements with publicly funded providers for authorization of and payment for services in the following categories:

- (A) Maternity case management;
- (B) Well-child care;
- (C) Prenatal care;
- (D) School-based clinic services;
- (E) Health services for children provided through schools and Head Start programs; and

(F) Screening services to provide early detection of health care problems among low-income women and children, migrant workers and other special population groups.

(d) Recognizing the social value of partnerships between county health departments, other publicly supported programs, and health providers, FCHPs and PCOs are encouraged to involve publicly supported health care and service programs in the development and implementation of managed health care programs through inclusion on advisory and/or planning committees;

(e) FCHPs and PCOs shall report to the Division on their status in executing agreements with publicly funded providers and on the involvement of publicly supported health care and service programs in the development and implementation of their program on an annual basis.

(3) FCHPs and PCOs shall ensure a newly enrolled Division member receives timely, adequate and appropriate health care services necessary to establish and maintain the health of the Division member. An FCHP’s liability covers the period between the Division member’s enrollment and disenrollment with the FCHP, unless the Division member is hospitalized at the time of disenrollment. In such an event, an FCHP is responsible for the inpatient hospital services until discharge or until the Division member’s PCP or designated practitioner determines the care is no longer medically appropriate.

(4) A PCO’s liability covers the period between the Division members’ enrollment and disenrollment with the PCO, unless the Division member is hospitalized at the time of disenrollment. In such an event, the PCO is not responsible for the inpatient hospital services by definition and the inpatient hospital services will be the responsibility of the Division.

(5) The Division member shall obtain all covered services, either directly or upon referral, from the PHP responsible for the service from the date of enrollment through the date of disenrollment.

(6) FCHPs and PCOs with a Medicare HMO component and MHOs have significant and shared responsibility for capitated services, and shall coordinate benefits for shared Division members to ensure that the Division member receives all medically appropriate services covered under respective capitation payments. If the fully dual eligible Division member is enrolled in a FCHP or PCO with a Medicare HMO component the following apply:

(a) Mental health services covered by Medicare shall be obtained from the FCHP or PCO or upon referral by the FCHP or PCO;

(b) Mental health services that are not covered by the FCHP or PCO that are covered by the MHO shall be obtained from the MHO or upon referral by the MHO.

(7) PHPs shall coordinate services for each Division member who requires services from agencies providing health care services not covered under the capitation payment. The PCP shall arrange, coordinate, and monitor other medical and mental health, and/or dental care for that Division member on an ongoing basis except as provided for in Section (7)(c) of this rule:

(a) PHPs shall establish and maintain working relationships with local or allied agencies, community emergency service agencies, and local providers;

(b) PHPs shall refer Division members to the divisions of the Department and local and regional allied agencies which may offer services not covered under the capitation payment;

(c) FCHPs and PCOs shall not require Division members to obtain the approval of a PCP in order to gain access to mental health and alcohol and drug assessment and evaluation services. Division members may refer themselves to MHO services.

Stat. Auth.: ORS 409.010 & 409.050

Stats. Implemented: ORS 192.518 - 192.526, 414.010, 414.050, 414.065, 414.727 & 442.807

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP

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65-2005, f. 11-30-05, cert. ef. 1-1-06; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09;  
DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-141-0220

### Managed Care Prepaid Health Plan Accessibility

(1) Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure access to all covered services for all Division members. PHPs shall communicate these policies and procedures to participating providers, regularly monitor participating providers' compliance with these policies and procedures, and take any corrective action necessary to ensure participating provider compliance. PHPs shall document all monitoring and corrective action activities. PHPs shall not discriminate between Division members and non-Division members as it relates to benefits and covered services to which they are both entitled:

(a) PHPs shall have written policies and procedures which ensure that for 90% of their Division members in each service area, routine travel time or distance to the location of the PCP does not exceed the community standard for accessing health care participating providers. The travel time or distance to PCPs shall not exceed the following, unless otherwise approved by the Division:

(A) In urban areas – 30 miles, 30 minutes or the community standard, whichever is greater;

(B) In rural areas – 60 miles, 60 minutes or the community standard, whichever is greater.

(b) PHPs shall maintain and monitor a network of appropriate participating providers sufficient to ensure adequate service capacity to provide availability of, and timely access to, medically appropriate covered services for Division members:

(A) PHPs shall have an access plan that establishes standards for access, outlines how capacity is determined and establishes procedures for monthly monitoring of capacity and access, and for improving access and managing risk in times of reduced participating provider capacity. The access plan shall also identify populations in need of interpreter services and populations in need of accommodation under the Americans with Disabilities Act;

(B) PHPs shall make the services it provides including: specialists, pharmacy, hospital, vision and ancillary services, as accessible to Division members in terms of timeliness, amount, duration and scope as those services are to non-Division persons within the same service area. If the PHP is unable to provide those services locally, it must so demonstrate to the Division and shall provide reasonable alternatives for Division members to access care that must be approved by the Division. PHPs shall have a monitoring system that will demonstrate to the Division or AMH, as applicable, that the PHP has surveyed and monitored for equal access of Division members to referral providers pharmacy, hospital, vision and ancillary services;

(C) PHPs shall have written policies and procedures and a monitoring system to ensure that Division members who are aged, blind, or disabled who have complex medical needs or who are children receiving CAF (SOSCF services) or OYA services have access to primary care, dental care, mental health providers and referral, as applicable. These providers shall have the expertise to treat, take into account and accommodate the full range of medical, dental or mental health conditions experienced by these Division members, including emotional, disturbance and behavioral responses, and combined or multiple diagnoses.

(2) PHPs and Primary Care Managers (PCMs) enrollment standards:

(a) PHPs and PCMs shall remain open for enrollment unless the Department has closed enrollment because the PHP or PCM has exceeded their enrollment limit or does not have sufficient capacity to provide access to services as mutually agreed upon by the Division or AMH, as appropriate, and the PHP or PCM;

(b) PHPs enrollment may also be closed by the Division or AMH, as appropriate due to sanction provisions;

(c) PHPs and PCMs shall accept all OHP clients, regardless of health status at the time of enrollment, subject to the stipulations in contracts/agreements with DHS to provide covered services or Primary Care management services;

(d) PHPs and PCMs may confirm the enrollment status of an OHP client by one of the following:

(A) The individual's name appears on the monthly or weekly enrollment list produced by the Division;

(B) The individual presents a valid medical care identification that shows he or she is enrolled with the PHP or PCM;

(C) The Automated Voice Response (AVR) verifies that the individual is currently eligible and enrolled with the PHP or PCM;

(D) An appropriately authorized staff member of the Department states that the individual is currently eligible and enrolled with the PHP or PCM.

(e) PHPs shall have open enrollment for 30 continuous calendar days during each twelve-month period of January through December, regardless of the PHPs enrollment limit. The open enrollment periods for consecutive years may not be more than 14 months apart.

(3) If a PHP is assumed by another PHP, Division members shall be automatically enrolled in the succeeding PHP. The Division member will have 30 calendar days to request disenrollment from the succeeding PHP. If the succeeding PHP is a Medicare Advantage plan, those Division members who are Medicare beneficiaries shall not be automatically enrolled but shall be offered enrollment in the succeeding PHP.

(4) If a PHP engages in an activity, such as the termination of a participating provider or participating provider group which has significant impact on access in that service area and necessitates either transferring Division members to other providers or the PHP withdrawing from part or all of a service area, the PHP shall provide the Department at least 90 calendar days written notice prior to the planned effective date of such activity:

(a) A PHP may provide less than the required 90 calendar days notice to the Department upon approval by the Department when the PHP must terminate a participating provider or participating provider group due to problems that could compromise Division member care, or when such a participating provider or participating provider group terminates its contract with the PHP and refuses to provide the required 90 calendar days notice;

(b) If DHS must notify Division members of a change in participating providers or PHPs, the PHP shall provide the Department with the name, prime number, and address label of the Division members affected by such changes at least 30 calendar days prior to the planned effective date of such activity. The PHP shall provide Division members with at least 30 calendar-days notice of such changes.

(5) PHPs shall have written policies and procedures that ensure scheduling and rescheduling of Division member appointments are appropriate to the reasons for, and urgency of, the visit:

(a) PHPs shall have written policies and procedures and a monitoring system to assure that Division members have access to appointments according to the following standards:

(A) FCHPs and PCOs:

(i) Emergency Care – The Division member shall be seen immediately or referred to an emergency department depending on the Division member's condition;

(ii) Urgent Care – The Division member shall be seen within 48 hours or as indicated in initial screening, in accordance with OAR 410-141-0140; and

(iii) Well Care – The Division member shall be seen within 4 weeks or within the community standard.

(B) DCOs:

(i) Emergency Care – The Division member shall be seen or treated within 24-hours;

(ii) Urgent Care – The Division member shall be seen within one to two weeks or as indicated in the initial screening in accordance with OAR 410-123-1060; and

(iii) Routine Care – The Division member shall be seen for routine care within an average of eight (8) weeks and within twelve (12) weeks or the community standard, whichever is less, unless there is a documented special clinical reason which would make access longer than 12 weeks appropriate.

(C) MHOs and CDOs:

(i) Emergency Care – Division member shall be seen within 24-hours or as indicated in initial screening;

(ii) Urgent Care – Division member shall be seen within 48 hours or as indicated in initial screening;

(iii) Non-Urgent Care – Division member shall be seen for an intake assessment within 2 weeks from date of request.

(b) PHPs shall have written policies and procedures to schedule patients and provide appropriate flow of Division members through the office such that Division members are not kept waiting longer than non-Division member patients, under normal circumstances. If Division members are kept waiting or if a wait of over 45 minutes from the time of a scheduled appointment is anticipated, Division members shall be afforded the opportunity to reschedule the appointment. PHPs must monitor waiting time for clients at least through complaint and appeal reviews, Division ter-

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mination reports, and Division member surveys to determine if waiting times for clients in all settings are appropriate;

(c) PHPs shall have written procedures and a monitoring system for timely follow-up with Division member(s) when participating providers have notified the PHP that the Division member(s) have failed to keep scheduled appointments. The procedures shall address determining why appointments are not kept, the timely rescheduling of missed appointments, as deemed medically or dentally appropriate, documentation in the clinical record or non-clinical record of missed appointments, recall or notification efforts, and outreach services. If failure to keep a scheduled appointment is a symptom of the Division member's diagnosis or disability or is due to lack of transportation to the PHP's participating provider office or clinic, PHPs shall provide outreach services as medically appropriate;

(d) PHPs shall have policies and procedures that ensure participating providers will attempt to contact Division members if there is a need to cancel or reschedule the Division member's appointment and there is sufficient time and a telephone number available;

(e) PHPs shall have written policies and procedures to triage the service needs of Division members who walk into the PCP's office or clinic with medical, mental health or dental care needs. Such triage services must be provided in accordance with OAR 410-141-0140, Oregon Health Plan Prepaid Health Plan Emergency and Urgent Care Services;

(f) DMAP members with non-emergent conditions who walk into the PCP's office or clinic should be scheduled for an appointment as appropriate to the Division member's needs or be evaluated for treatment within two hours by a medical, mental health or dental provider.

(6) PHPs shall have written policies and procedures that ensure the maintenance of 24-hour telephone coverage (not a recording) either on site or through call sharing or an answering service, unless this requirement is waived in writing by the Division and/or AMH because the PHP submits an alternative plan that will provide equal or improved telephone access:

(a) Such policies and procedures shall ensure that telephone coverage provides access to 24-hour care and shall address the standards for PCPs or clinics callback for emergency, urgent, and routine issues and the provision of interpretive services after office hours;

(b) FCHPs and PCOs shall have an adequate on-call PCP or clinic backup system covering internal medicine, family practice, OB/Gyn, and pediatrics, as an operative element of FCHP's and PCO's after hours care;

(c) Such policies and procedures shall ensure that relevant information is entered into the appropriate clinical record of the Division member regardless of who responds to the call or the time of day the call is received. PHPs shall monitor for compliance with this requirement;

(d) Such policies and procedures shall include a written protocol specifying when a medical, mental health or dental provider must be consulted. When medically appropriate, all such calls shall be forwarded to the on-call PCP who shall respond immediately to calls which may be emergent in nature. Urgent calls shall be returned appropriate to the Division member's condition, but in no event more than 30 minutes after receipt. If information is inadequate to determine if the call is urgent, the call shall be returned within 60 minutes;

(e) Such policies and procedures shall ensure that all persons answering the telephone (both for the PHP and the PHP's participating providers) have sufficient communication skills and training to reassure Division members and encourage them to wait for a return call in appropriate situations. PHPs shall have written procedures and trained staff to communicate with hearing impaired Division members via TDD/TTY;

(f) PHPs shall monitor compliance with the policies and procedures governing 24-hour telephone coverage and on-call PCP coverage, take corrective action as needed, and report findings to the PHP's quality improvement committee;

(g) PHPs shall monitor such arrangements to ensure that the arrangements provide access to 24-hour care. PHPs shall, in addition, have telephone coverage at PHP's administrative offices that will permit access to PHPs' administrative staff during normal office hours, including lunch hours.

(7) PHPs shall develop written policies and procedures for communicating with, and providing care to Division members who have difficulty communicating due to a medical condition or who are living in a household where there is no adult available to communicate in English or where there is no telephone:

(a) Such policies and procedures shall address the provision of qualified interpreter services by phone, in person, in PHP administrative offices, especially those of Division member services and complaint and grievance representatives and in emergency rooms of contracted hospitals;

(b) PHPs shall provide or ensure the provision of qualified interpreter services for covered medical, mental health or dental care visits, including home health visits, to interpret for Division members with hearing impairment or in the primary language of non-English speaking Division members. Such interpreters shall be linguistically appropriate and be capable of communicating in English and the primary language of the Division member and be able to translate clinical information effectively. Interpreter services shall be sufficient for the Provider to be able to understand the Division member's complaint; to make a diagnosis; respond to Division member's questions and concerns; and to communicate instructions to the Division member;

(c) PHPs shall ensure the provision of care and interpreter services which are culturally appropriate, i.e., demonstrating both awareness for and sensitivity to cultural differences and similarities and the effect of those on the medical care of the Division member;

(d) PHPs shall have written policies and procedures that ensure compliance with requirements of the Americans with Disabilities Act of 1990 in providing access to covered services for all Division members and shall arrange for services to be provided by Non-participating referral providers when necessary;

(A) PHPs shall have a written plan for ensuring compliance with these requirements and shall monitor for compliance;

(B) Such a plan shall include procedures to determine whether Division members are receiving accommodations for access and to determine what will be done to remove existing barriers and/or to accommodate the needs of Division members;

(C) This plan shall include the assurance of appropriate physical access to obtain covered services for all Division members including, but not limited to, the following:

(i) Street level access or accessible ramp into facility;

(ii) Wheelchair access to lavatory;

(iii) Wheelchair access to examination room; and

(iv) Doors with levered hardware or other special adaptations for wheelchair access.

(e) PHPs shall ensure that participating providers, their facilities and personnel are prepared to meet the complex medical needs of Division members who are aged, blind or disabled:

(A) PHPs shall have a written plan for meeting the complex medical needs of Division members who are aged, blind or disabled;

(B) PHPs shall monitor participating providers for compliance with the access plan and take corrective action, when necessary.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 38-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-141-0260

### Managed Care Prepaid Health Plan Complaint or Grievance and Appeal Procedures

(1) Definitions:

(a) Action – In the case of a PHP:

(A) The denial or limited authorization of a requested service, including the type or level of service;

(B) The reduction, suspension or termination of a previously authorized service;

(C) The denial in whole or in part, of payment for a service;

(D) The failure to provide services in a timely manner, as defined by the Division of Medical Assistance Programs (Division);

(E) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(F) For a Division member in a single PHP service area, the denial of a request to obtain services outside of the PHP's participating provider panel pursuant to OAR 410-141-0160 and 410-141-0220.

(b) Appeal – A request by a Division member or representative for review of an "action" as defined in this section;

(c) Complaint – A Division member's or Division member's representative's expression of dissatisfaction to a PHP or to a practitioner about any matter other than an action, as "action" is defined in this section;

(d) Grievance System – The overall system that includes a complaint process, an appeals process and access to the Division's administrative hearing process.



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(2) The purpose of OAR 410-141-0260 through 410-141-0266 is to describe the requirements for the overall grievance system. These rules will apply to all PHPs as defined in 410-141-0000.

(3) All PHPs shall have written policies and procedures for a grievance system that ensures that they meet the requirements of sections OAR 410-141-0260 to 410-141-0266.

(4) Information provided to the Division member shall include at least:

(a) Written material describing the PHP's complaint and appeal procedures, and how to make a complaint or file an appeal; and

(b) Assurance in all written, oral, and posted material of Division member confidentiality in the complaint and appeal processes.

(5) A Division member or a Division member's representative may file a complaint and a PHP level appeal orally or in writing, and may request a Division administrative hearing.

(6) PHPs shall keep all information concerning a Division member's complaint or appeal confidential as specified in OAR 410-141-0261 and 410-141-0262.

(7) Consistent with confidentiality requirements, the PHP's staff person who is designated to receive complaints or appeals, shall begin to obtain documentation of the facts concerning the complaint or appeal upon receipt of the complaint or appeal.

(8) PHPs shall afford Division members full use of the grievance system procedures. If the Division member decides to pursue a remedy through the Division's administrative hearing process, the PHP will cooperate by providing relevant information required for the hearing process.

(9) A request for a Division administrative hearing made to the Division outside of the PHP's appeal procedures, or without previous use of the PHP's appeal procedures shall be reviewed by the PHP through the PHP's appeal process upon notification by the Division as provided for in OAR 410-141-0264.

(10) Under no circumstances may a PHP discourage a Division member or a Division member's representative from using the Division's administrative hearing process.

(11) Neither implementation of a Division hearing decision nor a Division member's request for a hearing may be a basis for a request by the PHP for a Division member's disenrollment.

(12) PHPs shall make available a supply of blank complaint forms (OMAP 3001) in all PHP administrative offices and in those medical/dental offices where staff have been designated by the PHP to respond to complaints or appeals. PHPs shall make available a supply of blank Administrative Hearing Request forms (DHS 443) and the Notice of Hearing Rights forms (DMAP 3030). PHPs shall develop an appeal form and shall make the appeal forms, along with the DHS 443 and DMAP 3030 forms, available in all PHP administrative offices and in those medical/dental offices where staff have been designated by the PHP to respond to complaints or appeals.

(13) The PHP must provide information about the grievance system to all participating providers and subcontractors at the time they enter into a contract.

(14) The PHP must maintain logs that are in compliance with OAR 410-141-0266 to document complaints and appeals received by the PHP, and the State must review the information as part of the State quality strategy.

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

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

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-141-0263

### Notice of Action by a Prepaid Health Plan

The Division may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) When a PHP (or authorized practitioner (see definition) acting on behalf of the PHP) takes or intends to take any "action," including but not limited to denials or limiting prior authorizations of a requested service(s) in an amount, duration, or scope that is less than requested, or reductions, suspension, discontinuation or termination of a previously authorized service, or any other action, the PHP (or authorized practitioner acting on behalf of the PHP) shall mail a written client (see definition) Notice of Action in accordance with section (2) of this rule to the Division of Medical Assistance Programs (Division) member (see definition) within the timeframes specified in subsection (3) of this rule.

(2) The written client Notice of Action must be a Division approved format and it must be used for all denials of a requested service(s), reductions, discontinuations or terminations of previously authorized services, denials of claims payment, or other action. The client Notice of Action must meet the language and format requirements of 42 CFR 438.10(c) and (d) and shall inform the Division member of the following:

(a) Relevant information shall include, but is not limited to, the following:

(A) Date of client Notice of Action;

(B) PHP name;

(C) PCP/PCD name;

(D) The Division member's name and ID number;

(E) Date of service or item requested or provided;

(F) Who requested or provided the item or service; and

(G) Effective date of the action;

(b) The action the PHP or its participating provider (see definition) has taken or intends to take;

(c) Reasons for the action, with enough specificity to clearly explain the actual reason for the denial, including but not limited to the following reasons:;

(A) The item requires pre-authorization and it was not pre-authorized;

(B) The service or item is received in an emergency care setting and does not qualify as an Emergency Service under the prudent layperson standard;

(C) The person was not a Division member at the time of the service or is not a Division member at the time of a requested service; and

(D) The provider is not on the PHP's panel and prior approval was not obtained (if such prior authorization would be required under the Oregon Health Plan rules);

(d) A reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Action pursuant to subsection (b) of this section, in compliance with the notice requirements in ORS 183.415(2)(c);

(e) The Division member's right to file an appeal with the PHP and how to exercise that right as required in OAR 410-141-0262;

(f) The Division member's right to request a Division administrative hearing and how to exercise that right. A copy of a Hearing Request form (DHS 443) and Notice of Hearing Rights (DMAP 3030) must be attached to the Notice of Action;

(g) The circumstances under which expedited appeal resolution is available and how to request it;

(h) The Division member's right to have benefits continue pending resolution of the appeal, how to request that benefit(s) be continued, and the circumstances under which the Division member may be required to pay the costs of these services; and

(i) The telephone number to contact the PHP for additional information.

(3) The PHP or practitioner acting on behalf of the PHP must mail the Notice of Action within the following time frames:

(a) For termination, suspension, or reduction of previously authorized OHP covered services (see definition), the following time frames apply:

(A) The notice must be mailed at least 10 calendar days before the date of action, except as permitted under subsections (B) or (C) of this section;

(B) The PHP (or authorized practitioner acting on behalf of the PHP) may mail a notice not later than the date of action if:

(i) The PHP or practitioner receives a clear written statement signed by the Division member that he or she no longer wishes services or gives information that requires termination or reduction of services and indicates that he or she understands that this must be the result of supplying the information;

(ii) The Division member has been admitted to an institution where he or she is ineligible for covered services from the PHP;

(iii) The Division member's whereabouts are unknown and the post office returns PHP or practitioner's mail directed to him or her indicating no forwarding address;

(iv) The PHP establishes the fact that another State, territory, or commonwealth has accepted the Division member for Medicaid services;

(v) A change in the level of medical or dental care is prescribed by the Division member's PCP or PCD; or

(vi) The date of action will occur in less than 10 calendar days, in accordance with 42 CFR 483.12(a)(5)(ii), related to discharges or transfers and long-term care facilities;

(C) The PHP may shorten the period of advance notice to 5 calendar days before the date of the action if the PHP has facts indicating that an

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action should be taken because of probable fraud by the Division member. Whenever possible, these facts should be verified through secondary sources:

(b) For denial of payment, at the time of any action affecting the claim;

(c) For standard prior authorizations that deny a requested service or that authorize a service in an amount, duration, or scope that is less than requested, the PHP must provide Notice of Action as expeditiously as the Division member's health condition requires and within 14 calendar days following receipt of the request for service, except that:

(A) The PHP may have a possible extension of up to 14 additional calendar days if the Division member or the provider requests the extension; or if the PHP justifies (to the Division upon request) a need for additional information and how the extension is in the Division member's interest;

(B) If the PHP extends the timeframe, in accordance with subsection (A) of this section, it must give the Division member written notice of the reason for the decision to extend the timeframe and inform the Division member of their right to file a grievance if he or she disagrees with that decision. The PHP must issue and carry out its prior authorization determination as expeditiously as the Division member's health condition requires and no later than the date the extension expires:

(d) For prior authorization decisions not reached within the timeframes specified in subsection (c) of this section, (which constitutes a denial and is thus an adverse action), on the date that the timeframes expire;

(e) For expedited prior authorizations, within the timeframes specified in OAR 410-141-0265.

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

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

Stats. Implemented: ORS 414.065

Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-141-0280

### Managed Care Prepaid Health Plan Potential Member Informational Requirements

(1) Managed Care Organizations (MCOs) shall develop informational materials for potential Division of Medical Assistance Programs (Division) members:

(a) MCOs shall provide the Division and/or Addictions and Mental Health Division (AMH) with informational materials sufficient for the potential Division member to make an informed decision about provider selection and enrollment. Information on participating providers must be made available from the MCO, upon request to potential Division members, and must include participating providers' name, location, languages spoken other than English, qualification and the availability of the PCP, clinic and specialists, including whether they are currently accepting members, and prescription drug formularies used. Informational materials may be included in the application packet for potential Division members;

(b) MCOs shall ensure that all MCOs staff who have contact with potential Division members are fully informed of MCO and the Division and/or AMH policies, including enrollment, disenrollment, complaint and grievance policies and the provision of interpreter services including which participating providers' offices have bilingual capacity;

(c) MCOs shall cooperate and provide accurate information to the Division for the updating of the comparison charts.

(d) Information for potential members will comply with marketing prohibitions in 42 CFR 438.104.

(2) Informational materials that MCOs develop for potential Division members shall meet the language requirements of, and be culturally sensitive to people with disabilities or reading limitations, including substantial populations whose primary language is not English in its particular service area(s).

(a) MCOs shall be required to follow the Division substantial household criteria required by ORS 411.970, which determines and identifies those populations that are considered non-English speaking households. The MCO shall be required to provide informational materials, which at a minimum, shall include the Division member handbook in the primary language of each substantial population. Alternative forms may include, but are not limited to audio tapes, close-captioned videos, large type and Braille;

(c) All written informational materials distributed to potential Division members shall be written at the sixth grade reading level and printed in 12 point font or larger;

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-141-0300

### Managed Care Prepaid Health Plan Member Education Requirements

CDO: Chemical Dependency Organization

DCO: Dental Care Organization

ENCC: Exceptional Needs Care Coordination

FCHP: Fully Capitated Health Plan

MCO: Managed Care Organization

MHO: Mental Health Organization

OHP: Oregon Health Plan

DMAP: Division of Medical Assistance Programs

AMH: Addictions and Mental Health Division

PCD: Primary Care Dentist

PCO: Physician Care Organization

PCP: Primary Care Provider

(1) MCOs shall have an ongoing process of Division Member education and information sharing that includes orientation to the MCO, a Member handbook and health education. Division Member education shall include:

(a) How to access ENCC through FCHPs and PCOs for Division Members with special health care needs, who are Aged, Blind or Disabled who have complex medical needs; and

(b) The appropriate use of the delivery system, including a proactive and effective education of Division Members on how to access Emergency Services and Urgent Care Services appropriately.

(2) MCOs shall offer MCO orientation to new Division Members by mail, phone, or in person within 30 days of Enrollment a new member packet, including at a minimum a member handbook, provider directory and welcome letter.

(3) MCO Member handbook:

(a) The MCO Member handbook shall be made available for returning Division Members, and shall be distributed to new members, including members returning 9 months or more after previous enrollment, within 14 calendar days of the date on the Division Member's OHP enrollment letter;

(b) Each version of the MCO member handbook shall be submitted to the DMAP Materials Coordinator and AMH Representative for approval. At a minimum the MCO Member handbook shall contain the following elements:

(A) Location(s), office hours and availability of physical access for Division Members with disabilities to PHP and PCP and PCD offices;

(B) Telephone number(s) (including TTY) for Division Members to call for more information and telephone numbers relating to information listed below;

(C) Division Member's choice and use of PCPs, PCDs and policies on changing PCPs, PCDs;

(D) How to make an appointment with a provider;

(E) Use of the MCOs referral system, including procedures for obtaining benefits, including authorization requirements;

(F) How Division Members are to access Urgent Care Services and advice;

(G) How and when Division Members are to use Emergency Services including information on Post-Stabilization Care after a Division Member is stabilized in order to maintain, to improve or resolve the Division Member's condition;

(H) Member appeal rights, including information on the MCOs Complaint process and information on Division fair hearing procedures;

(I) How Division Members are to access interpreter services including sign interpreters;

(J) Information on the Division Member's rights and responsibilities;

(K) Information on the Division Member's possible responsibility for charges including Medicare deductibles and coinsurances (if they go outside of MCO for non-emergent care), co-payments, and charges for non-covered services;

(L) The transitional procedures for new Division Members to obtain prescriptions, supplies and other necessary items and/or services in the first month of Enrollment with the MCO if they are unable to meet with a PCP, PCD, other prescribing Practitioner or obtain new orders during that period;

(M) What services can be self-referred to both participating and non-participating providers (FCHPs, PCOs and MHOs only);

(N) (FCHPs and PCO only) to adult Division Members written information on advance directive policies including:

(i) A description of applicable state law;

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(ii) Division Member rights under Oregon law;  
(iii) The contractor's policies for implementation of those rights, including a statement of any limitation regarding the implementation of advanced directives as a matter of conscience.

(O) How to request information on the MCOs physician incentives to reduce cost by limiting services;

(P) The Division Member's right to request and obtain copies of their clinical records (and whether they may be charged a reasonable copying fee) and to request that the record be amended or corrected;

(Q) How Division Members are to obtain emergent and non-emergent ambulance services (FCHP and PCO only) and other medical transportation to appointments, as appropriate;

(R) Explanation of the covered and non-covered services in sufficient detail to ensure that Division Members understand the benefits to which they are entitled;

(S) How Division Members are to obtain prescriptions including information on the process for obtaining non-formulary and over-the-counter drugs;

(T) MCOs confidentiality policy;

(U) A Provider Directory (which may be a separate document) including name, locations, telephone numbers of, and non-English languages offered by current Participating Providers, information on PCPs, specialists and hospitals in the Division Member's service area including information on MCOs PCPs/PCDs that are currently accepting new Division Members  
(V) The extent to which; and how, Division Members may obtain benefits, including family planning services, from non-participating providers;

(W) Any restrictions on the Division Member's freedom of choice among participating providers;

(X) Policies on referrals for specialty care and for other benefits not furnished by the Division Member's PCP;

(Y) How and where Division Members are to access any benefits that are available under OHP but are not covered under the MCOs' contract, including any cost sharing, and how transportation is provided.

(Z) When and how members can voluntarily and involuntarily disenroll from OHP managed care and change MCOs.

(c) If the MCO handbook is returned with a new address, the MCO shall re-mail the handbook and submit the address correction to the Division's Address Project.

(d) MCOs shall, at a minimum, annually review their member handbook for accuracy and update it with new and corrected information as needed to reflect OHP program changes and the MCOs internal changes. If changes impact the Division member's ability to use services or benefits, the updated member handbook shall be distributed to all Division members;

(e) The MCO shall distribute its member handbook to new enrollees as described in OAR 410-141-0300(3)(a), and upon request to Division members, Division member's representatives and to clinical offices for distribution to Division members.

(f) The Department "Oregon Health Plan Client Handbook" is in addition to the MCO's Division Member handbook and cannot be used to substitute for the MCO's Division Member handbook.

(4) MCOs shall have written procedures and criteria for health education of Division Members. Health education shall include: information on specific health care procedures, instruction in self-management of health care, promotion and maintenance of optimal health care status, patient self-care, and disease and accident prevention. Health education may be provided by MCO's Practitioner(s) or other individual(s) or program(s) approved by the MCO. MCOs shall endeavor to provide health education in a culturally sensitive manner in order to communicate most effectively with individuals from non-dominant cultures: MCOs shall ensure development and maintenance of an individualized health educational plan for Division Members who have been identified by their Practitioner as requiring specific educational intervention. The Department may assist in developing materials that address specifically identified health education problems to the population in need.

(5) Informational materials that MCOs develop for Division Members shall meet the language requirements of, and be culturally sensitive to members with disabilities or reading limitations, including substantial populations whose primary language is not English:

(a) MCOs shall be required to follow the Division substantial household criteria required by ORS 411.062, which determines and identifies those populations that are considered non-English speaking households. The MCO shall be required to provide informational materials which at a minimum shall include the Division Member handbook in the primary language of each substantial population. Alternative forms may include, but

are not limited to audio tapes, close-captioned videos, large type and Braille;

(b) Form correspondence sent to Division Members, including but not limited to, Enrollment information, choice and Division Member counseling letters and notices of action to deny, reduce or stop a benefit shall include instructions in the language of each substantial population of non-English speaking Division Members on how to receive an oral or written translation of the material;

(c) All written informational materials distributed to Division Members shall be written at the sixth grade reading level and printed in 12 point font or larger;

(d) MCOs shall provide written notice to affected Division Members of any significant changes in program or service sites that impacts the Division Members' ability to access care or services from MCO's participating providers. Such notice shall be provided at least 30 calendar days prior to the effective date of that change, or as soon as possible if the participating provider(s) has not given the MCO sufficient notification to meet the 30 days notice requirement. The Division and/or AMH will review and approve such materials within two working days

(5) MCOs shall provide an identification card to Division Members, unless waived by the Division and/or AMH, which contains simple, readable and usable information on how to access care in an urgent or emergency situation. Such identification cards shall confer no rights to services or other benefits under the Oregon Health Plan and are solely for the convenience of the PHP's, Division Members and providers.

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

Stat. Auth.: ORS ORS 409.050

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11

## 410-141-0420

### Oregon Health Plan Prepaid Health Plan Billing and Payment Under the Oregon Health Plan

The Division may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) All billings for Oregon Health Plan clients to Prepaid Health Plans (PHPs) and to the Division shall be submitted within four (4) months and twelve (12) months, respectively, of the date of service, subject to other applicable Division billing rules. Submissions shall be made to PHPs within the four (4) month time frame except in the following cases:

(a) Pregnancy;

(b) Eligibility issues such as retroactive deletions or retroactive enrollments;

(c) Medicare is the primary payor;

(d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of provider to certify the Division member's (see definition) eligibility); or

(e) Third Party Liability (TPL). Pursuant to 42 CFR 36.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payor of last resort and is not considered an alternative liability or TPL.

(2) Providers must be enrolled with the Division to be eligible for Fee-for-Service (FFS) payment by the Division. Mental health Providers, except Federally Qualified Health Centers, must be approved by the Local Mental Health Authority (LMHA) and the Addictions and Mental Health Division (AMH) before enrollment with DMAP. Providers may be retroactively enrolled, in accordance with OAR 410-120-1260, Provider Enrollment.

(3) Providers, including mental health providers (see definition), do not have to be enrolled, as described in (2) above with the Division to be eligible for payment for services by PHPs except that providers who have been excluded as Medicare/Medicaid providers by the Division, CMS or by lawful court orders are ineligible to receive payment for services by PHPs.

(4) Providers shall verify, before rendering services, which the Division member is eligible for the Medical Assistance Program on the date of service using the Division tools and optionally the PHP's tools, as applicable and that the service to be rendered is covered under the Oregon Health Plan Benefit Package of covered services. Providers shall also identify the party responsible for covering the intended service and seek pre-authorizations from the appropriate payor before rendering services.



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Providers shall inform Division members of any charges for non-covered services (see definition) prior to the services being delivered.

(5) Capitated Services:

(a) PHPs receive a capitation payment to provide services to Division members. These services are referred to as capitated services;

(b) PHPs are responsible for payment of all capitated services. Such services should be billed directly to the PHP, unless the PHP or the Division specifies otherwise. PHPs may require providers to obtain preauthorization to deliver certain capitated services.

(6) Payment by the PHP to participating providers for capitated services is a matter between the PHP and the participating provider, except as follows:

(a) Pre-authorizations:

(A) PHPs shall have written procedures for processing pre-authorization requests received from any provider. The procedures shall specify time frames for:

(i) Date stamping pre-authorization requests when received;

(ii) Determining within a specific number of days from receipt whether a pre-authorization request is valid or non-valid;

(iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(iv) The specific number of days following receipt of the additional information that a redetermination must be made;

(v) Providing services after office hours and on weekends that require preauthorization;

(vi) Sending notice of the decision with Appeal rights to the Division member when the determination is made to deny the requested service as specified in 410-141-0263.

(B) PHPs shall make a determination on at least 95% of Valid Pre-Authorization requests, within two working days of receipt of a preauthorization or reauthorization request related to urgent services; alcohol and drug services; and/or care required while in a skilled nursing facility. Pre-authorizations for prescription drugs must be completed and the pharmacy notified within 24 hours. If a pre-authorization for a prescription cannot be completed within the 24 hours, the PHP must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHP shall notify providers of such determination within 2 working days of receipt of the request;

(C) For expedited prior authorization requests in which the provider indicates, or the PHP determines, that following the standard timeframe could seriously jeopardize the Division member's life or health or ability to attain, maintain, or regain maximum function:

(i) The PHP must make an expedited authorization decision and provide notice as expeditiously as the Division member's health condition requires and no later than three working days after receipt of the request for service;

(ii) The PHP may extend the three working days time period by up to 14 calendar days if the Division member requests an extension, or if the PHP justifies to Division a need for additional information and how the extension is in the Division member's interest.

(D) For all other pre-authorization requests, PHPs shall notify providers of an approval, a denial or a need for further information within 14 calendar days of receipt of the request. PHPs must make reasonable efforts to obtain the necessary information during that 14-day period. However, the PHP may use an additional 14 days to obtain follow-up information, if the PHP justifies (to the Division upon request) the need for additional information and how the delay is in the interest of the Division member. The PHP shall make a determination as the Division member's health condition requires, but no later than the expiration of the extension.

(b) Claims Payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

(i) Date stamping claims when received;

(ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(iii) The specific number of days allowed for follow up of pended claims to obtain additional information;

(iv) The specific number of days following receipt of additional information that a determination must be made; and

(v) Sending notice of the decision with Appeal rights to the Division member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90% of valid claims within 45 calendar days of receipt and at least 99% of valid claims within 60 calendar

days of receipt. PHPs shall make an initial determination on 99% of all claims submitted within 60 calendar days of receipt;

(C) PHPs shall provide written notification of PHP determinations when such determinations result in a denial of payment for services, for which the Division member may be financially responsible. Such notice shall be provided to the Division member and the treating provider within 14 calendar days of the final determination. The notice to the Division member shall be a Division or AMH approved notice format and shall include information on the PHPs internal appeals process, and the Notice of Hearing Rights (DMAP 3030) shall be attached. The notice to the provider shall include the reason for the denial;

(D) PHPs shall not require providers to delay billing to the PHP;

(E) PHPs shall not require Medicare be billed as the primary insurer for services or items not covered by Medicare, nor require non-Medicare approved providers to bill Medicare;

(F) PHPs shall not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the Division member's clinical record;

(G) PHPs shall not delay nor deny payments because a co-payment was not collected at the time of service.

(c) FCHPs, PCOs, and MHOs are responsible for payment of Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for covered services the Division member receives within the PHP, for authorized referral care, and for urgent care services or emergency services the Division member receives from non-participating providers (see definition). FCHPs, PCOs, and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care Division members receive from non-participating providers;

(d) FCHPs and PCOs shall pay transportation, meals and lodging costs for the Division member and any required attendant for out-of-state services (as defined in General Rules) that the FCHP and PCO has arranged and authorized when those services are available within the state, unless otherwise approved by the Division;

(e) PHPs shall be responsible for payment of covered services (see definition) provided by a non-participating provider which was not pre-authorized if the following conditions exist:

(A) It can be verified that the participating provider (see definition) ordered or directed the covered services to be delivered by a non-participating provider; and

(B) The covered service was delivered in good faith without the pre-authorization; and

(C) It was a covered service that would have been pre-authorized with a participating provider if the PHP's referral protocols had been followed;

(D) The PHP shall be responsible for payment to non-participating providers (providers enrolled with the Division that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(7) Other services:

(a) Division members enrolled with PHPs may receive certain services on a Division FFS basis. Such services are referred to as non-capitated services (see definition);

(b) Certain services must be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though such services are then paid by the Division on a Division FFS basis. Before providing services, providers should verify a Division Member's eligibility via the web portal or AVR. For some mental health services, providers will need to contact the CMHP directly. In addition, the provider may call the PHP to obtain information about coverage for a particular service or pre-authorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate Division administrative rules and supplemental information, including rates and billing instructions;

(d) Providers shall bill the Division directly for non-capitated services in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(e) The Division shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions and Division administrative rules and supplemental information;

(f) The Division will not pay a provider for provision of services for which a PHP has received a capitation payment unless otherwise provided for in OAR 410-141-0120;

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(g) When an item or service is included in the rate paid to a medical institution, a residential facility or foster home, provision of that item or service is not the responsibility of the Division, AMH, nor a PHP except as provided for in Division administrative rules and supplemental information (e.g., capitated services that are not included in the nursing facility all-inclusive rate);

(h) FCHPs and PCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment which the FCHP or PCO would make for the same service(s) furnished by a provider, who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the Oregon Health Plan Benefit Package of covered services is limited by OAR 410-141-0500, excluded services and limitations for OHP clients.

(9) OHP clients who are enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per client/per month payment to provide Primary Care Management Services, in accordance with OAR 410-141-0410, Primary Care Manager Medical Management;

(b) PCMs provide Primary Care access, and management services for preventive services, primary care services, referrals for specialty services, limited inpatient hospital services and outpatient hospital services. The Division payment for these PCM managed services is contingent upon PCCM authorization;

(c) All PCM managed services are covered services that shall be billed directly to the Division in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(d) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

(10) All OHP clients who are enrolled with a PCO receive inpatient hospital services on a Division FFS basis:

(a) May receive services directly from any appropriately enrolled Division provider;

(b) All services shall be billed directly to the Division in accordance with FFS billing instructions contained in the Division administrative rules and supplemental information;

(c) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

(11) OHP clients who are not enrolled with a PHP receive services on a Division FFS basis:

(a) Services may be received directly from any appropriate enrolled Division provider;

(b) All services shall be billed directly to the Division in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(c) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

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

Stat. Auth.: ORS 409.010, 409.110, 414.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 53-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 9-2007, f. 6-14-07, cert. ef. 6-29-07; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11

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**Rule Caption:** October 2010 Technical Changes to the 1/1/09–12/31/10 Health Services Commission’s Prioritized List of Health Services and the 1/1/11–12/31/12 List.

**Adm. Order No.:** DMAP 43-2010

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 410-141-0520

**Rules Repealed:** 410-141-0520(T)

**Subject:** The Oregon Health Plan (OHP or Managed Care) Program administrative rules govern the Division of Medical Assistance Programs’ (Division) payment for services to clients.

Having temporarily amended 410-141-0520, the Division will permanently amended the rule to reference the January 1, 2009–December 31, 2010 Health Services Commission’s Prioritized List with interim modifications and technical changes effective October 1, 2010, this included application of 2009 national code to the HSC lines and HSC guideline refinements.

The Division further amends the rule, effective January 1, 2011, to reference the new January 1, 2011–December 31, 2012 biennial Health Services Commission’s Prioritized List.

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

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-141-0520

### Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission’s (HSC) listing of physical health services with “expanded definitions” of preventive services and the HSC’s practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website: [www.oregon.gov/DHS/healthplan/priorlist/main](http://www.oregon.gov/DHS/healthplan/priorlist/main), or, for a hardcopy contact the Office for Oregon Health Policy and Research. This rule incorporates to reference the CMS approved biennial January 1, 2009–December 31, 2010 Prioritized List, including interim modifications and technical revisions made for the 2009 national code set and effective October 1, 2010 that includes expanded definitions, practice guidelines and condition treatment pairs funded through line 502. This rule will also incorporate to reference the new CMS approved biennium January 1, 2011 — December 31, 2012 Prioritized List.

(2) Certain mental health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Addictions and Mental Health and approval to bill Medicaid for CD services.

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

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

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-04; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f. & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09 cert. ef. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10; DMAP 10-2010, f. & cert. ef. 4-26-10; DMAP 27-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 43-2010, f. 12-28-10, cert. ef. 1-1-11

# ADMINISTRATIVE RULES

## Oregon Health Authority, Office for Oregon Health Policy and Research Chapter 409

**Rule Caption:** Physician VISA Waiver Program Rules.

**Adm. Order No.:** OHP 7-2010

**Filed with Sec. of State:** 12-29-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Ren. & Amend:** 333-005-0000 to 409-035-0000, 333-005-0010 to 409-035-0010, 333-005-0020 to 409-035-0020, 333-005-0030 to 409-035-0030, 333-005-0040 to 409-035-0040, 333-005-0050 to 409-035-0050, 333-005-0060 to 409-035-0060

**Subject:** The Oregon Health Authority, Office for Oregon Health Policy and Research needs to amend and renumber OAR 333-005-0000 through 333-005-0060 to 409-035-0000 through 409-035-0060. The rule is being moved from Chapter 333 (Public Health Division) to Chapter 409 (Office for Oregon Health Policy and Research) to align and update references consistent with agency reorganization. Rule language is being clarified and amended to comply with changes in federal regulation 22 CFR 41.63. The current rules require 20% of patient visits to be either Low Income Uninsured or Medicaid recipients. Proposed language allows inclusion of Medicare patient visits in the 20% (see 409-035(3)(c)). The proposed rules also respond to a change in federal law that allows up to ten J-1 physician placements per year to practice in federally non-designated areas so long as they will treat patients from federally designated areas. Changes to this rule will allow a greater ability to serve clients in areas where there is a physician shortage.

**Rules Coordinator:** Zarie Haverkate—(503) 373-1574

### 409-035-0000

#### Purpose of the Physician Visa Waiver Program

The purpose of the Physician Visa Waiver program is to make recommendations to the United States Department of State for waivers of the foreign country residency requirement on behalf of physicians holding visas who seek employment in federally designated areas having a shortage of physicians. These rules set forth the requirements for Oregon to make requests for waiver of the foreign country residency requirement as authorized under 8 U.S.C. secs. 1182(e) and 1184(l).

Stat. Auth.: ORS 409.745

Stats. Implemented: ORS 409.745

Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04; Renumbered from 333-005-0000 by OHP 7-2010, f. 12-29-10, cert. ef. 1-1-11

### 409-035-0010

#### Definitions

For the purposes of this Division, the following definitions apply:

(1) "Application" means the Physician Visa Waiver Program application form and accompanying documentation.

(2) "Authority" means the Oregon Health Authority.

(3) "Department of State" means the federal agency that reviews J-1 applications.

(4) "Flex Option" means the placement of a physician in an area that is not federally designated, who will serve patients living in designated shortage areas.

(5) "Health Care Facility" means the clinic or hospital that employs the J-1 physician.

(6) "Health Services and Resources Administration" (HRSA) means the branch of the Department of Health and Human Services that designates federal shortage areas.

(7) "Health Care Shortage Area" means a geographic area or site approved by HRSA. Categories include Health Professional Shortage area (HPSA), Medically Underserved Area (MUA), and Medically Underserved Population (MUP).

(8) "J-1 Application" refers to the application form and supporting material submitted jointly by the health care facility and the J-1 physician to the Authority.

(9) "J-1 Physician" means allopathic or osteopathic physician who is requesting a waiver of the two-year foreign country residency requirement in order to practice in a facility that is either located in a federally designated shortage area or serves patients living in designated shortage areas.

(10) "Low Income" means a patient whose income does not exceed 200% of the current Federal Poverty Guidelines (see: <http://aspe.hhs.gov/poverty>).

(11) "Mental Health Facility" means an agency that provides mental health services in an outpatient, residential, or hospital setting.

(12) "Primary Care Physician" means a physician licensed in Oregon to practice family medicine, general internal medicine, obstetrics and gynecology, pediatrics, or general psychiatry.

(13) "United States Citizenship and Immigration Services" means the agency that replaced the Immigration and Naturalization Service, effective March 1, 2003.

Stat. Auth.: ORS 409.745

Stats. Implemented: ORS 409.745

Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04; Renumbered from 333-005-0010 by OHP 7-2010, f. 12-29-10, cert. ef. 1-1-11

### 409-035-0020

#### Health Care Facility Participation Requirements

(1) Federally Qualified Health Centers with a HPSA score at or above the requirements of 22CFR41.63 shall apply for a J-1 Waiver through the United States Department of Health and Human Services (see: <http://www.globalhealth.gov/exchangevisitorprogram/index.html>); Federally Qualified Health Centers with a HPSA score below the requirements of 22CFR41.63 shall apply through the Authority.

(2) If a health care facility is located in a Medically Underserved Area (MUA) or Medically Underserved Population (MUP) that is not a Health Professional Shortage Area (HPSA), or if the request is for a flex option, then the facility must obtain prior approval from the Authority and provide documentation substantiating the area's need for a physician.

(3) In order to qualify for the Oregon Physician Visa Waiver Program the health care facility must:

(a) Identify the nature of the business entity seeking to employ the physician, including but not limited to domestic or foreign professional corporation, domestic or foreign private corporation, LLC, or partnership, and provide a certificate of existence or proof of authorization to do business in Oregon;

(b) Have provided care for a minimum of six months in Oregon, or supply evidence of stability such as HRSA funding, prior to submitting an application;

(c) Currently serve Medicare, Medicaid, and low income uninsured patients that are members of the population of the local HRSA designation. A minimum of 20% of the total current patient visits must be Medicaid, Medicare, or other low-income patients. At least half of the 20% requirement, i.e. 10%, must be Medicaid and low income uninsured patients, excluding Medicare.

(d) Post a sliding fee schedule in the primary languages of the population being served;

(e) Document attempts to actively recruit an American doctor for at least six months prior to submission of the application;

(f) Execute an employment contract with the physician that includes the following provisions:

(A) Duration of at least three years;

(B) Wages and working conditions comparable to those for a graduate from an American medical school;

(C) A signed U.S. Department of Labor Prevailing Wage Form (ETA-9035);

(D) May not include a non-compete clause or restrictive covenant that prevents or discourages the physician from continuing to practice in any designated area after the term of the contract expires;

(E) Specifies the geographic shortage area within Oregon in which the physician will practice or, if requesting a flex option, the shortage area or areas where prospective patients live;

(F) The physician shall treat all patients regardless of their ability to pay;

(G) The physician shall provide patient care on a full-time basis, a minimum of 40 hours per week;

(4) The health care facility shall submit to the Authority a fee of \$2,000 and two original copies of the application packet for each waiver requested.

Stat. Auth.: ORS 409.745

Stats. Implemented: ORS 409.745

Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04; Renumbered from 333-005-0020 by OHP 7-2010, f. 12-29-10, cert. ef. 1-1-11



# ADMINISTRATIVE RULES

## 409-035-0030

### Physician Participation Requirements

In order to qualify for consideration by this program the physician must:

- (1) Obtain a Department of State case number prior to submitting an application to the Authority;
- (2) Submit a completed application that:
  - (a) Documents having, or having applied for, an active Oregon medical license. If the residency or fellowship is not completed, the license application may be listed as "pending";
  - (b) Documents board certification or, if the residency or fellowship is not yet completed, board eligibility upon completion of the program;
  - (c) Includes either a "No Objection" letter from the home country, or a statement that the physician is not contractually obligated to return to the home country.
  - (d) Includes a signed and dated statement certifying that the physician does not have any other pending J-1 waiver requests;
  - (e) Provides a letter of recommendation from the department head of the physician's residency or fellowship program;
  - (f) Includes evidence of graduation or of the projected date of graduation from the residency or fellowship program.
  - (g) Documents an agreement to begin employment with the health care facility within 90 days from the date the waiver is granted;
  - (h) Includes a copy of the medical degree or diploma, translated into English;
  - (i) Includes legible copies of all DS 2019 Forms;
  - (j) Documents satisfactory completion of all examinations required by the United States Citizenship and Immigration Services;
  - (k) Includes a curriculum vita that documents the physician's date of birth, city and country of birth.

Stat. Auth.: ORS 409.745

Stats. Implemented: ORS 409.745

Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04; Renumbered from 333-005-0030 by OHP 7-2010, f. 12-29-10, cert. ef. 1-1-11

## 409-035-0040

### Application Review Process

(1) The Authority shall review completed health care facility applications that meet all requirements of 409-035-0020. Potential physician participants must meet all requirements set forth in 409-035-0030.

(2) The following factors shall be considered in determining whether to recommend a request for waiver of the foreign country residency requirement:

(a) The type of medicine to be practiced. Eighty percent of the slots allotted for each federal fiscal year are reserved for primary care physicians as defined in OAR 409-035-0010. Applications from community health centers with HPSA scores below 7 and from mental health facilities shall receive priority.

(b) Geographic distribution of physicians. To the extent possible, the Authority shall attempt equitable distribution of waiver requests for eligible areas of the state. The number of physicians already working under waivers or recommended for waivers in a particular geographic area shall be taken into consideration.

(c) Facility patient profile. The health care facility's percentage of patient visits which are covered by the state Medicaid program, Medicare, or are low income, uninsured.

(3) The Authority shall return incomplete applications, including application fees. The Authority shall process completed resubmitted applications, including fees, as of the new date of receipt.

(4) The Authority shall review each completed application and notify the applicant of the results within 15 business days.

(5) The Authority shall forward recommended waiver requests to the Department of State. The Department of State shall forward waiver requests recommended for approval to the United States Citizenship and Immigration Services, which shall determine whether to issue or deny the waiver.

(6) The Authority may re-allocate positions based on a review of current access needs in the state. The Authority may also recommend or decline to recommend a waiver request.

Stat. Auth.: ORS 409.745

Stats. Implemented: ORS 409.745

Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04; Renumbered from 333-005-0040 by OHP 7-2010, f. 12-29-10, cert. ef. 1-1-11

## 409-035-0050

### Monitoring and Follow-up Requirements

In order to maintain participation in the Physician Visa Waiver Program the health care facility must:

(1) Notify the Authority in writing as soon as the physician starts work;

(2) Promptly submit semi-annual reports signed by the physician and the Chief Executive Officer of the health care facility verifying the physician's employment. The first report is due six months after employment begins, and every six months thereafter, until the term of the contract is complete. Failure to submit timely, accurate reports shall result in a report of non-compliance to the United States Citizenship and Immigration Services.

(3) Notify the Authority immediately of any change or prospective change in the physician's employment status.

(4) Allow Authority auditors access to health care facility and physician records.

Stat. Auth.: ORS 409.745

Stats. Implemented: ORS 409.745

Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04; Renumbered from 333-005-0050 by OHP 7-2010, f. 12-29-10, cert. ef. 1-1-11

## 409-035-0060

### Transfer of J-1 Waiver Physician Obligation

(1) A physician who is granted a visa waiver and who encounters a practice failure due to extenuating circumstances may, with Authority approval, finish the three-year service obligation at another approved health care facility. A written transfer request must be submitted to the Authority documenting the need for the transfer.

(2) The request must include the reason for transfer, proposed new employer, the health care facility director's name, practice name, address, telephone number, and proposed date of transfer.

(3) The original employer must provide a letter releasing the physician from the employment contract and providing an explanation for the termination. The Authority may waive this requirement if the original employer is in non-compliance with federal requirements, federal or state law, or with these rules.

(4) The new employer must:

(a) Provide a letter of intent to employ the physician;

(b) Provide a copy of the new employment contract;

(c) Meet health care facility participation requirements as set forth in these rules;

(d) Work with the physician to jointly submit semi-annual Verification of Employment forms as required by the Authority.

Stat. Auth.: ORS 409.745

Stats. Implemented: ORS 409.745

Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04; Renumbered from 333-005-0060 by OHP 7-2010, f. 12-29-10, cert. ef. 1-1-11

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

**Rule Caption:** Expedite health insurance enrollment process.

**Adm. Order No.:** OPHP 1-2011(Temp)

**Filed with Sec. of State:** 1-5-2011

**Certified to be Effective:** 1-5-11 thru 4-8-11

**Notice Publication Date:**

**Rules Amended:** 442-005-0030

**Rules Suspended:** 442-005-0030(T)

**Subject:** FHIAP is amending: 442-005-0030 to enable approved FHIAP members to enroll in health insurance more quickly.

**Rules Coordinator:** Margaret Moran—(503) 378-5664

## 442-005-0030

### Application Process

(1) An application form, and any documentation required on the form, will be used to determine eligibility and subsidy level.

(2) The application process is the only time when applicants may submit information proving their program eligibility. Information not submitted during this process will not be accepted for purposes of audit, appeal or contested case hearing except as provided in OARs 442-005-0310, 442-005-0320, 442-005-0330 and 442-005-0340.

(3) Program openings occur when funds are available.

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(4) When there are program openings, applicants are mailed an application on a first come first served basis.

(5) FHIAP reviews applications in the order they are received. Eligibility decisions include:

- (a) Approval for immediate subsidy;
- (b) Denial; or

(c) Request for more information. When there are no program openings, an application may be approved, but not eligible for immediate subsidy. These approvals are held in queue. Applicants are mailed a notice when they are able to enroll for subsidies.

(6) FHIAP must notify applicants of other health care programs such as OHP and Healthy Kids.

(7) Documents that verify required information requested on the application must be provided with the application if FHIAP is not able to verify the information electronically. Required documentation includes but is not limited to:

(a) A copy of a current Oregon identification or other proof of Oregon residency for all adult applicants;

(b) For non-United States citizens, a copy of documentation from the Department of Homeland Security showing their status and when they arrived in the United States.

(c) Documents verifying all adult applicant's and spouse's earned and unearned income and children's unearned income for the three months prior to the month in which the application is signed. Documentation may include, but is not limited to, pay stubs, award letters, child support documentation and unemployment benefit stubs or printouts;

(d) A completed Self-Employment Income Worksheet and documents verifying income from self-employment for the six months prior to the month the application was signed, if applicable. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(e) A completed Farming, Fishing and Ranching Income Worksheet and documents verifying income from farming, fishing and ranching for the 12 months prior to the month the application was signed, if applicable. Documentation may include, but is not limited to, business ledgers, profit and loss statements and bank statements;

(f) The most recently filed federal tax return and all schedules for applicants who have income from self-employment or farming, fishing or ranching.

(g) A copy of any group insurance handbook, summary, or contract that is available to any applicant.

(h) A completed Group Insurance Information (GII) form, if the applicant has group insurance available to them.

(i) For applicants with no income, the completed No Income form or other signed statement explaining how the applicant is meeting their basic needs, such as food, clothing and shelter.

(8) Additional verification must be provided when FHIAP requests it.

(9) FHIAP may verify any factors affecting eligibility, benefit levels or any information reported, such as:

(a) Data or other information received by FHIAP that is inconsistent with information on the FHIAP application.

(b) Information provided on the application is inconsistent;

(c) Information reported on previous applications that is inconsistent with a current FHIAP application.

(10) FHIAP may decide at any time during the application process that additional eligibility factors must be verified.

(11) FHIAP may deny an application or end ongoing subsidy when acceptable verification or required documentation is not provided.

Stat. Auth.: ORS 735.734, 735.722(2) & 735.728(2)

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 6-2010(Temp), f. & cert. ef. 10-11-10 thru 4-8-11; OPHP 1-2011(Temp), f. & cert. ef. 1-5-11 thru 4-8-11

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**Oregon Health Authority,  
Public Health Division  
Chapter 333**

**Rule Caption:** Updating rules for Medical Marijuana pertaining to application documentation.

**Adm. Order No.:** PH 27-2010

**Filed with Sec. of State:** 12-28-2010

**Certified to be Effective:** 12-28-10

**Notice Publication Date:** 11-1-2010

**Rules Adopted:** 333-008-0045

**Rules Amended:** 333-008-0020, 333-008-0040

**Rules Repealed:** 333-008-0020(T)

**Subject:** The Oregon Health Authority, Public Health Division, Oregon Medical Marijuana Program is permanently amending administrative rules in chapter 333, division 8 to clarify existing rule and add guidance in order to clarify the procedures regarding acceptable documentation accompanying an application for the registry so that applicant processing time improves. Also, to distinguish Interim Changes from Annual Renewal as these require different processes.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-008-0020

### New Registration Application and Verification

(1) A person may apply for a registry identification card on a form prescribed by the Authority. In order for an application to be considered complete, an applicant must submit the following:

(a) An application form signed and dated by the applicant;

(b) Copies of legible, current, and valid U.S. government issued photographic identification that includes last name, first name, and date of birth from the applicant, the designated primary caregiver, and grower, as applicable. Acceptable forms of U.S. government issued photographic identification include but are not limited to:

(A) Driver's license;

(B) State identification card;

(C) Passport; or

(D) Military identification card;

(c) Documentation, which may consist of relevant portions of the applicant's medical record, signed by the applicant's attending physician within 90 days of the date of receipt by the Authority, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(d) A completed and notarized "Declaration of Person Responsible for Minor" form for any person under 18 years of age, signed and dated by the person responsible for the minor; and

(e) An application fee in the form of cash, bank check, or personal check. The Authority will place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. An applicant will be given 14 days from Authority receipt of non-sufficient funds (NSF) or stop payment notification to submit payment in the form of a bank check or cash.

(f) The OMMP will only accept applications that are mailed or are hand-delivered.

(g) The OMMP may reject an application if the application or supporting documents appear to be altered (i.e. writing is whited out). An application will be denied in accordance with OAR 333-008-0030 if an application or supporting documents are determined to have been falsified.

(2) An applicant may only name, and the Authority will only register, one designated primary caregiver and one grower.

(3) The fee for a new application is \$100.

(4) An applicant who can prove he or she is an Oregon resident and can demonstrate current eligibility in the OHP, receipt of current food stamp benefits through the Oregon SNAP program, or receipt of current SSI benefits, qualifies for a reduced application fee of \$20.

(a) To qualify for a reduced fee on the basis of current eligibility in the OHP, an applicant must provide a copy of the applicant's current eligibility statement.

(b) To qualify for a reduced fee on the basis of receipt of current SSI benefits, an applicant must provide a copy of a current monthly SSI benefit card, showing dates of coverage.

(c) To qualify for a reduced fee on the basis of receipt of current food stamp benefits, an applicant must be current in Oregon's Food Stamp Management Information System database system and provide current proof of his or her food stamp benefits.

(d) Proof of residency may be shown through:

(A) A current Oregon driver's license or Oregon issued identification card; and

(B) A utility bill, mortgage statement, lease payment statement or lease agreement for the previous month with the applicant's name and an Oregon physical address.

(5) The Authority may verify information on each application and accompanying documentation, including:

(a) Contacting each applicant by telephone or by mail. If proof of identity is uncertain, the Authority may require a face-to-face meeting and may require the production of additional identification materials;

(b) Contacting a minor's parent or legal guardian;

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(c) Contacting the Oregon Board of Medical Examiners to verify that an attending physician is licensed to practice in the state and is in good standing;

(d) Contacting the attending physician to request further documentation to support a finding that the physician is the applicant's attending physician. The Authority will notify the applicant of the intent to review the medical records and request the applicant's authorization to conduct the review. Failure to authorize a review of medical records may result in the application being declared incomplete, or denial of an application;

(e) Contacting the OHP, DHS-Self Sufficiency, or Social Security Administration (SSA) to verify eligibility for benefits; and

(f) Conducting criminal records check under ORS 181.534 of any person whose name is submitted as a grower.

(6) The Authority will notify an applicant who submits a reduced fee for which the applicant is not eligible and will give the applicant 14 days from the date of notice to pay the correct fee, submit a current, valid eligibility determination statement for the OHP, current proof of food stamp benefits, or to submit a copy of a receipt for current SSI monthly benefit, as applicable. The Authority will continue to process the application pending receipt of an eligibility statement. The Authority will not grant an application fee refund for any eligibility determination made on or after the date of issuance of the applicant's registry identification card.

(7) If an applicant does not provide all the information required and the application is considered incomplete, the Authority shall notify the applicant of the information that is missing, and shall give the applicant 14 days to submit the missing information.

(8) If the Authority is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010(3) the applicant will be allowed 30 days to submit written documentation or a new attending physician's declaration from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475.309 and OAR 333-008-0030.

(9) If an applicant does not provide the information necessary to declare an application complete, or to complete the verification process within the timelines established in sections (7) and (8) of this rule, the application will be rejected as incomplete. An applicant whose application is rejected as incomplete may reapply at any time.

(10) The application forms referenced in this rule may be obtained by contacting the: Oregon Medical Marijuana Program (OMMP) at PO Box 14450, Portland, OR 97293-0450 or calling 971-673-1234.

Stat. Auth.: ORS 475.338  
Stats. Implemented: ORS 475.300 - 475.346  
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 13-2000(Temp), f. & cert. ef. 12-21-00 thru 6-15-01; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 38-2004, f. 12-22-04, cert. ef. 1-1-05; PH 17-2005, f. 11-25-05, cert. ef. 12-1-05; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 14-2010(Temp), f. & cert. ef. 7-6-10 thru 12-31-10; PH 27-2010, f. & cert. ef. 12-28-10

## 333-008-0040

### Annual Renewal and Interim Changes

(1) A patient shall register on an annual basis to maintain active registration status by submitting a renewal application prescribed by the Authority. A renewal application shall be submitted by mail or in person at the OMMP office.

(2) Between 60 to 90 calendar days prior to expiration, the Authority shall mail to the patient's address of record, a letter notifying the patient of the upcoming expiration date, along with a renewal application.

(3) In addition to completing the renewal application, the patient must submit, prior to the expiration of the registry identification card:

(a) Written documentation, signed by the patient's attending physician within 90 days prior to the expiration date of the patient's current card, reconfirming the patient's debilitating medical condition and that the medical use of marijuana mitigates the symptoms of the patient's debilitating medical condition; and

(b) The information and fee required in OAR 333-008-0020(1)(a), (b), (d) and (e).

(4) If the renewal information is not received by the expiration date on the registry identification card, the patient's registry identification card and all other associated OMMP cards, if any, will be deemed expired. The expiration date may be extended, due to personal hardship, at the discretion of the Authority. If a person fails to apply for renewal within the time period specified in this rule, that person must submit a new application.

(5) The renewal fee is \$100 and an applicant may qualify for a reduced fee of \$20 if the applicant meets the criteria set forth in OAR 333-008-0020(3).

(6) The Authority will verify the renewal application information in the same manner as specified in OAR 333-008-0020(4).

(7) The OMMP may reject a renewal application if the application or supporting documents appear to be altered (i.e. writing is whited out). An application will be denied in accordance with OAR 333-008-0030 if an application or supporting documents are determined to have been falsified.

Stat. Auth.: ORS 475.309 & 475.312  
Stats. Implemented: ORS 475.309 & 475.312  
Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; PH 9-2003, f. 6-26-03, cert. ef. 7-1-03; PH 18-2005, f. 12-30-05, cert. ef. 1-1-06; PH 15-2007, f. 12-19-07, cert. ef. 1-1-08; PH 21-2010, f. & cert. ef. 9-13-10; PH 27-2010, f. & cert. ef. 12-28-10

## 333-008-0045

### Interim Changes

(1) A patient shall notify the Authority within 30 calendar days of any change in the patient's name, address, telephone number, attending physician, designated primary caregiver, grower or grow site address.

(2) A patient shall notify the designated primary caregiver and the grower of any changes in status including, but not limited to:

(a) The assignment of another individual as the designated primary caregiver for the patient;

(b) The assignment of another individual as a grower for the patient;

or  
(c) The end of eligibility of the patient to hold a registry identification card.

(3) If the Authority is notified by the patient that a primary caregiver or a grower has changed, the Authority shall notify the primary caregiver or the grower by mail at the address of record confirming the change in status and informing the caregiver or grower that their card is no longer valid and must be returned to the Authority within seven calendar days.

(4) A patient who has been diagnosed by an attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the patient's debilitating medical condition shall return the registry identification card and all associated OMMP cards to the Authority within 30 calendar days of notification of the diagnosis or notification of the contraindication. If, due to circumstances beyond control of the patient he or she is unable to obtain a second medical opinion about the patient's continuing eligibility to use medical marijuana before the 30-day period has expired, the Authority may grant the patient additional time to obtain a second opinion before requiring the patient to return the registry identification card and all associated cards.

(5) Change forms may only be submitted to the OMMP via mail or in person at the OMMP office.

Stat. Auth.: ORS 475.309 & 475.312  
Stats. Implemented: ORS 475.309 & 475.312  
Hist.: PH 27-2010, f. & cert. ef. 12-28-10

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**Rule Caption:** Ambulance Vehicle Licensing and Emergency Medical Technicians and First Responders.

**Adm. Order No.:** PH 1-2011

**Filed with Sec. of State:** 1-6-2011

**Certified to be Effective:** 1-6-11

**Notice Publication Date:** 11-1-2010

**Rules Amended:** 333-255-0070, 333-255-0071, 333-255-0072, 333-255-0073, 333-265-0050, 333-265-0090, 333-265-0105, 333-265-0110

**Rules Repealed:** 333-255-0070(T), 333-265-0090(T), 333-265-0105(T)

**Subject:** The Oregon Health Authority, Public Health Division is permanently amending Oregon Administrative Rules chapter 333, division 265, to streamline and clarify rules, address requirements for training, and correct errors that were unintentionally made in the last permanent rule change. The Oregon Health Authority, Public Health Division is also permanently amending Oregon Administrative Rules chapter 333, division 255 to clarify the minimum staffing requirements that must be met to operate an ambulance.

**Rules Coordinator:** Brittany Sande—(971) 673-1291

## 333-255-0070

### Ground Ambulance Operating Requirements

(1) In order to operate a ground ambulance a licensee shall:

(a) Have a driver that meets the qualifications in OAR chapter 333, division 250;



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(b) Have emergency medical technicians or other qualified licensed health care professionals staffing the ambulance, as required by OAR chapter 333, division 250.

(c) Ensure that the appropriate equipment is available and in satisfactory working condition, stored in a sanitary and secure manner that protects the viability and safe operation of medications and equipment, including but not limited to:

(A) Installed medical oxygen cylinder with a capacity of at least 3,000 liters and having not less than 500 psi:

(i) The installed medical oxygen cylinder must be located in a vented compartment; and

(ii) The compartment shall not be utilized for storage of any non-secured equipment. No combustible items shall be stored in the oxygen compartment.

(B) Oxygen pressure regulator:

(i) The oxygen must be delivered by a single-stage regulator which is set to at least 50 psi;

(ii) The pressure regulator controls must be accessible from inside the patient compartment; and

(iii) The pressure regulator or other display must be visible from inside the patient compartment.

(C) Oxygen flow meter, mounted — 2:

(i) The flow meter must be readable from the EMT seat and squad bench; and

(ii) The flow meter must be adjustable over a minimum range of 0 to 15 liters per minute.

(D) Portable medical oxygen cylinder with a capacity of at least 300 liters and having not less than 500 psi:

(i) The oxygen must be delivered by a yoke regulator with a pressure gauge and non-gravity-dependent flow meter that is visible and accessible to the medical personnel; and

(ii) The flow meter must be adjustable over a minimum range of 0 to 15 liters per minute.

(E) Spare portable oxygen cylinder that is full, tagged, sealed and securely mounted;

(F) Oxygen non-rebreathing masks with tubing:

(i) Pediatric — 2; and

(ii) Adult — 3.

(G) Oxygen nasal cannula with tubing that are transparent and disposable, adult — 3;

(H) Bag-valve-mask ventilation device with reservoir. The device must:

(i) Have a standard universal adapter;

(ii) Be operable with or without an oxygen supply;

(iii) Be manually operated and self-refilling; and

(iv) Have bag-valve-mask ventilation devices with reservoir that are transparent and semi-rigid in assorted sizes to include adult, child, and newborn/infant.

(I) Pharyngeal esophageal airway devices in assorted sizes with agency Supervising Physician approval;

(J) Oxygen Saturation Monitor;

(K) Endtidal CO<sub>2</sub> detection device in assorted sizes;

(L) Oropharyngeal airways in assorted sizes to include adult, child, and newborn/infant;

(M) Nasopharyngeal airways in assorted sizes;

(N) Two suction apparatus. Suction apparatus:

(i) Shall be electrically powered or battery powered with pressure regulator.

(ii) If battery powered, shall have enough back-up batteries to maintain suction during routine transport.

(O) Adequate supply of wide-bore tubing, commercial rigid pharyngeal curved suction tips and flexible suction catheters sized from infant to adult;

(P) Collection canisters, either disposable or sealable liners, with adequate capacity.

(Q) Cardiac monitoring equipment including, at a minimum, a portable battery operated automatic or semi-automatic defibrillator (AED), with pediatric capabilities and sufficient pediatric accessories for proper operation on a pediatric patient.

(R) A wheeled stretcher:

(i) Capable of securely fastening to the ambulance body;

(ii) Having a minimum of three restraining devices and an upper torso (over the shoulder) restraint;

(iii) Containing a standard size waterproof foam mattress; and

(iv) Capable of having the head of the stretcher tilted upwards to a 60-degree semi-sitting position.

(S) At least one folding stretcher, the number required based on the stretcher-carrying capacity of the ambulance, or an additional long backboard:

(i) Capable of securely fastening to the squad bench when carrying a patient; and

(ii) Having a minimum of three restraining devices and an upper torso (over the shoulder) restraint.

(T) Fracture immobilization equipment, including but not limited to:

(i) Traction splints in assorted adult sizes and/or adult child combination;

(ii) Extremity splints in assorted sizes;

(iii) Extrication collars in assorted pediatric through adult sizes;

(iv) Scoop stretcher, folding or non-folding type with necessary restraining devices with sufficient supplies for head immobilization;

(v) Short backboard or equivalent with necessary restraining devices with sufficient supplies for head immobilization;

(vi) Long backboard with necessary restraining devices with sufficient supplies for head immobilization;

(vii) Pediatric backboard with necessary restraining straps with sufficient supplies for head immobilization;

(viii) Bandages and dressings in assorted sizes, sterile and non-sterile; and

(ix) Adhesive or hypo-allergenic tape in assorted sizes.

(U) Miscellaneous equipment, including but limited to:

(i) Emesis containers;

(ii) Stethoscope, pediatric and adult;

(iii) Aneroid sphygmomanometer in assorted sizes;

(iv) Bandage shears;

(v) Hypothermia thermometer;

(vi) Disposable obstetrical kit;

(vii) Chemical heat and cold packs assorted;

(viii) Urinals, female and male, one each;

(ix) Bedpan;

(x) Set of extremity restraining devices;

(xi) Blood glucose level testing kit or blood glucose level test strips;

(xii) Medications and fluids authorized for Basic Life Support use as required by the EMS Medical Director; and

(xiii) Linen supplies and replacements sufficient to cover wheeled stretchers.

(V) Personal protection equipment sufficient for crew and patient(s), including but not limited to:

(i) Non-latex disposable gloves;

(ii) Disposable face masks;

(iii) Protective eyewear;

(iv) Disposable isolation gowns;

(v) Commercial antimicrobial hand cleanser;

(vi) Surface cleaning disinfectant;

(vii) Sharps container for the patient care compartment and a separate container for each kit that contains needles; and

(viii) Infectious waste disposal bags.

(W) Security and rescue equipment, including but not limited to:

(i) Fire extinguisher, 5lb. (2A-10BC type) — mounted and readily accessible in either the driver's or patient compartment;

(ii) Road flares, red colored chemical lights, the number and burning time to equal at least 180 minutes, or a minimum of six reflective triangles;

(iii) Flashlight;

(iv) Leather gloves sufficient for crew;

(v) Reflective vests for each crew member;

(vi) HEPA mask for each crew member; and

(vii) Adequate extrication equipment for agencies that provide initial response without the response of other rescue apparatus or equipment.

(X) The 2008 Department of Transportation Emergency Response Guidebook, (Initial Response to Hazardous Materials Incidents);

(Y) Triage tags — 25;

(Z) Oregon Trauma Systems Identification Bracelets — 5;

(AA) Prehospital Care Report Forms or electronic field data form;

(BB) A copy of BLS standing orders for dated within one year and signed by the EMS Medical Director;

(CC) A universal "No Smoking" sign conspicuously displayed in the driver's and patient compartment; and

(DD) A universal "Fasten Seatbelt" sign conspicuously displayed in the driver's compartment.

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(2) An ambulance shall have two-way radio communication equipment to provide reliable contact between the ambulance and central dispatch, the receiving hospital, and online medical direction.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist. HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0650; HD 14-1981(Temp), f. & ef. 8-7-81; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 9-1987, f. & ef. 7-21-87; HD 19-1991, f. & cert. ef. 10-18-91, Former 333-028-0050(3) Renumbered to 333-028-0051, former 333-028-0050(4) & (5) Renumbered to 333-028-0052; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0050; OHD 5-2001, f. & cert. ef. 2-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10; PH 16-2010(Temp), f. & cert. ef. 7-16-10 thru 1-1-11; PH 1-2011, f. & cert. ef. 1-6-11

## 333-255-0071

### Ground Ambulance Operating Requirements When Providing Intermediate Level Care

(1) A ground ambulance in operation and providing intermediate life support care must have a minimum staff of two certified emergency medical technicians:

(a) A driver who complies with the requirements specified in OAR chapter 333, division 250; and

(b) A person who is at or above the Advanced Emergency Medical Technician or EMT-Intermediate certification level must be in the patient compartment when a patient is receiving intermediate level life support care. If the driver is not a certified EMT, then a second EMT, Basic or above, must be available for patient care both in the ambulance and on scene.

(2) Must meet all requirements specified in OAR 333-255-0070.

(3) A ground ambulance in operation and providing intermediate level care must have the following items in satisfactory working condition, kept in a sanitary manner, stored in a secure manner and be readily accessible to the medical personnel:

(a) All items specified in OAR 333-255-0070;

(b) Cardiac Monitoring Equipment:

(A) A portable battery powered manual monitor defibrillator capable of recording ECG reading;

(B) ECG electrodes, adult and pediatric;

(C) Hands-free defibrillation patches, adult and pediatric or defibrillation paddles, adult and pediatric;

(D) Contact gel if using paddles;

(E) Patient cables — 2; and

(F) ECG paper.

(c) Any physiologic isotonic crystalloid solution or combinations thereof — 6000 cc in any size containers;

(d) Medications and fluids authorized for use by an EMT-Advanced or Intermediate as required by the EMS Medical Director. Storage of controlled substances in an ambulance must adhere to the signed and dated procedures as specified in OAR 333-250-0047(3)(a) and (b);

(e) Vascular access devices:

(A) Over-the-needle catheters in assorted sizes 24-gauge through 14-gauge; and

(B) Specifically-designed needles or device with needles for intraosseous infusions.

(f) A copy of standing orders for EMT-Advanced or Intermediates dated within one year and signed by the EMS Medical Director.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10; PH 1-2011, f. & cert. ef. 1-6-11

## 333-255-0072

### Ground Ambulance Operating Requirements When Providing Advanced Level Care

(1) A ground ambulance in operation and providing advanced life support level care must have a minimum staff of two persons:

(a) A driver who complies with the requirements specified in OAR chapter 333, division 250; and

(b) A person who is at the EMT-Paramedic certification level, or an RN, PA or physician who is trained in prehospital emergency medical care must be in the patient compartment when a patient is receiving advanced life support care. If the driver is not a certified EMT, then a second EMT, Basic or above, must be available for patient care both in the ambulance and on scene. The EMT, RN, PA or physician must:

(A) Not have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(B) Not be taking any medications that could impair the giving of proper patient care.

(c) When a RN, PA or physician is staffing an ambulance in lieu of an EMT-Paramedic and providing advanced level life support care he or she must have:

(A) A current American Heart Association "Health Care Provider," American Red Cross "Basic Life Support for the Professional Rescuer" or other Division-approved equivalent CPR course completion document;

(B) A current Advanced Cardiac Life Support course or other Division-approved equivalent completion document;

(C) A pediatric advanced life support course or other Division-approved equivalent completion document;

(D) A Prehospital Trauma Life Support, Basic Trauma Life Support, Trauma Emergency Assessment Management or Trauma Nurse Core Course completion document. The Trauma Emergency Assessment Management and Trauma Nurse Core Course must include a supplemental prehospital rapid extrication training session; and

(E) The ability to properly assist in extricating, lifting and moving a patient.

(2) Must meet all requirements specified in OAR 333-255-0070.(3) Advanced life support patient care equipment. A ground ambulance in operation and providing advanced level care must have the following advanced life support equipment in satisfactory working condition, kept in a sanitary manner and which is readily accessible to medical personnel:

(a) All items specified in OAR 333-255-0070;

(b) Nasogastric tubes in assorted sizes;

(c) Cardiac monitoring equipment as specified in OAR 333-255-0071(2)(b);

(d) Advanced airway care equipment:

(A) Laryngoscope handle and assorted blade sizes, adult and pediatric;

(B) Spare dated batteries for the laryngoscope handle;

(C) Spare bulbs for the laryngoscope blades;

(D) Endotracheal tubes in assorted sizes, adult and pediatric;

(E) Magill Forceps — adult and child;

(F) Intubation stylettes — adult and child;

(G) Endtidal CO2 detection device;

(H) Oxygen saturation monitor; and

(I) Chest decompression equipment.

(e) Sterile intravenous agents and medications authorized by the EMS Medical Director;

(f) Vascular access devices:

(A) Over-the-needle catheters in assorted sizes 24-gauge through 14-gauge; and

(B) Specifically-designed needles or device designed for intraosseous infusions.

(g) Storage of controlled substances in an ambulance must adhere to the signed and dated procedures as specified in OAR 333-250-0047(3)(a) and (b); and

(h) A copy of standing orders for paramedics or ambulance based clinicians dated within one year and signed by the EMS Medical Director.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10; PH 1-2011, f. & cert. ef. 1-6-11

## 333-255-0073

### Ground Ambulance Operating Requirements When Providing Only Specialty Level Care

(1) A ground ambulance in operation and providing only specialty level care during inter-facility transfers must have a minimum staff of two qualified persons as defined by the Center for Medicare Services or additional staff, the number and type, requested by the transferring physician:

(a) A driver who complies with the requirements specified in OAR chapter 333, division 250; and

(b) A person who is at the EMT-Paramedic certification level, RN, PA, physician or other qualified persons who have additional specialty care training and who must be in the patient compartment when a patient is receiving specialty level care.

(2) Must meet all requirements specified in OAR 333-255-0072.

(3) The EMT-Paramedics, RNs, PAs, physicians or other qualified persons must have the:

(a) Training to properly operate all patient care equipment carried on an ambulance, including specialty care equipment necessary to care for the patient during the transfer;

(b) Training to do titration of intravenous medications necessary to care for the patient during transfer; and

(c) Ability to properly assist in lifting and moving a patient.

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(3) The personnel staffing an ambulance must not:

(a) Have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(b) Be taking any medications that could impair the giving of proper patient care.

(4) A ground ambulance in operation and providing only specialty level care must have the following patient care equipment in a satisfactory working condition, stored in a sanitary and secure manner, and be readily accessible to the medical personnel:

(a) All patient care equipment specified in OAR 333-255-0072; and

(b) Any other patient care equipment or supplies anticipated or required for patient care.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017, 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10; PH 1-2011, f. & cert. ef. 1-6-11

## 333-265-0050

### First Responder and EMT Certification by Indorsement

(1) A person certified with another state as a First Responder, EMT-Basic, Advanced EMT, EMT-Intermediate, or EMT-Paramedic and registered with the National Registry of EMT's as a First Responder, EMT-Basic, Advanced EMT, EMT-Intermediate I-99, EMT-Intermediate I-85, or EMT-Paramedic may apply to the Division for a certificate by indorsement.

(a) A National Registry EMT-Intermediate I-99 may apply for an Oregon EMT-Intermediate certificate by indorsement.

(b) A National Registry EMT-Intermediate I-85 may apply for an EMT-Basic certificate by indorsement.

(2) A person applying for Oregon First Responder or EMT certification by indorsement shall:

(a) Submit a completed application on a form prescribed by the Division along with the applicable nonrefundable fee;

(b) Submit documentation of the First Responder or EMT training which meets or exceeds the requirements for Oregon First Responder or EMT certification at the level of certification for which the person is applying;

(c) If applying for EMT-Paramedic certification by indorsement, submit proof of having received an associate's degree or higher from an accredited institution of higher learning or submit proof of having worked for at least three years out of the last five years as a paramedic in either another state or in the United States military at the National Registry Paramedic level.

(d) Be in good standing with the applicant's current certifying agency and with the National Registry of EMTs; and

(e) Consent to a criminal background check in accordance with OAR 333-265-0025(3).

(3) The Division shall review an application for certification by indorsement and shall conduct a criminal background check.

(4) If there are no issues that arise during the review of the application and the applicant meets all the applicable requirements of ORS chapter 682 and these rules, the Division shall grant the applicant a certificate by indorsement.

(5) If the applicant does not meet the standards for certification, or there are criminal history or personal history issues that call into question the ability of the applicant to perform the duties of a certified first responder or EMT, in accordance with ORS chapter 682 or these rules, the Division may deny the application on the basis of the information provided, or conduct an additional investigation in accordance with OAR 333-265-0085. Following such an investigation the Division may take any action as specified in OAR 333-265-0040(4).

(6) The Division shall be the sole agency authorized to determine equivalency of course work presented from an out of state accredited institution of higher learning.

(7) The Division shall be the sole agency authorized to determine equivalency of work experience in lieu of the associate degree requirement for EMT-Paramedics.

(8) The Division shall return any application that is incomplete, or can not be verified.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0620; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 18-1990(Temp), f. & cert. ef. 6-19-90; HD 19-1991, f. & cert. ef. 10-18-91; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0020; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 1-2011, f. & cert. ef. 1-6-11

## 333-265-0090

### Reverting to a Lower Level of EMT Certification

(1) An EMT may revert to a lower level of certification at any time during a certification period if the EMT:

(a) Submits a written request to the Division specifying the reason for the change in the certification level;

(b) Submits an application for recertification for the lower level of certification sought with the appropriate fee;

(c) Surrenders his or her current EMT certificate to the Division;

(d) Is in good standing with the Division;

(e) Adequately documents appropriate continuing education hours and courses for the certification level the individual would revert to; and

(f) Receives written approval from the Division for a change in certification level.

(2) If an EMT requests reinstatement of the higher level of certification within one year of reverting to a lower level of certification the EMT must complete the requirements specified in OAR 333-265-0100(3) and 333-265-0105.

(3) If an EMT requests reinstatement of the higher level of certification after one year, but less than two years the EMT must complete the requirements specified in OAR 333-265-0105.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0037; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 16-2010(Temp), f. & cert. ef. 7-16-10 thru 1-1-11; PH 1-2011, f. & cert. ef. 1-6-11

## 333-265-0105

### Reinstatement of First Responder and EMT Certification

(1) To reinstate an expired Oregon First Responder, EMT-Basic, Advanced EMT, EMT-Intermediate, or EMT-Paramedic certificate that has been expired for less than one year, an applicant must:

(a) Submit a completed application for recertification;

(b) Submit the appropriate recertification fee plus a late fee; and

(c) Provide evidence of completion of continuing education requirements as specified in Appendix 1, incorporated by reference, and courses completed from the certificate holder's last successful application through the date of the present application for recertification, as specified in this rule.

(2) To reinstate an Oregon First Responder, EMT-Basic, EMT-Intermediate, or EMT Paramedic certificate that has been expired for more than one year, but less than two years, a certificate holder must submit a completed application for certification with the appropriate fee and successfully complete a Division approved reinstatement program described in these rules.

(3) Reinstatement program for a certified First Responder:

(a) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Division approved equivalent CPR course completion document;

(b) Complete the First Responder refresher course approved by the Division;

(c) Pass the First Responder cognitive and practical examinations within three attempts, including a same-day re-examination; and

(d) Complete the above listed program requirements within six months of applying for reinstatement.

(4) Reinstatement program for an EMT-Basic:

(a) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Division approved equivalent CPR course completion document;

(b) Complete the EMT-Basic Refresher Training Program, U.S. Department of Transportation, National Highway Traffic Safety Administration, 1995, incorporated by reference;

(c) Pass the EMT-Basic cognitive and practical examinations within three attempts, including a same-day re-examination; and

(d) Complete the above listed program requirements within six months of applying for reinstatement.

(5) Reinstatement program for an EMT-Intermediate:

(a) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Division approved equivalent CPR course completion document;

(b) Complete a Division approved EMT-Intermediate refresher course consisting of at least:

(A) Thirty six hours of didactic instruction; and

(B) Demonstration of five supervised and documented successful pharyngeal esophageal airway device placements (mannequin permitted)



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and five supervised and documented successful intravenous line placements (mannequin permitted).

(c) Pass the EMT-Intermediate cognitive and practical examination within three attempts, including the same day re-examination; and

(d) Complete the above listed program requirements within one year of applying for reinstatement.

(6) Reinstatement program for an EMT-Paramedic:

(a) Complete an Advanced Cardiac Life Support (ACLS) course, provider or instructor course;

(b) Complete a Basic Trauma Life Support (BTLS) course, or Pre-Hospital Trauma Life Support (PHTLS) course, provider or instructor course;

(c) Complete an Advanced Pediatric Life Support (APLS), Pediatric Advanced Life Support (PALS), Pediatric Education for Pre-hospital Professionals (PEPP), or Neonatal Advance Life Support (NALS) course, provider or instructor course;

(d) Complete the U.S. Department of Transportation, National Highway Traffic Safety Administration 2001 EMT-Paramedic: National Standard Curriculum Refresher Training Program, incorporated by reference;

(e) Pass the EMT-Paramedic cognitive and practical examinations within three attempts, including the same-day re-examination;

(f) Complete the above listed program requirements within two years of applying for reinstatement; and

(g) Document completion of a DOT EMT-Paramedic Training Program taken after January 1, 1977.

Stat. Auth.: ORS 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 16-2010(Temp), f. & cert. ef. 7-16-10 thru 1-1-11; PH 1-2011, f. & cert. ef. 1-6-11

## 333-265-0110

### Certified First Responder and EMT Continuing Education Requirements for Recertification

(1) A First Responder is required to:

(a) Complete 12 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(b) Complete all requirements of the National Registry of Emergency Medical Technicians for First Responder re-registration.

(2) An EMT-Basic is required to:

(a) Complete 24 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(b) Complete all requirements of the National Registry of EMT-Basic or Emergency Medical Technician re-registration.

(3) An Advanced EMT is required to:

(a) Complete 36 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(b) Complete all requirements of the National Registry of EMT Advanced EMT re-registration.

(4) An EMT-Intermediate is required to:

(a) Complete a course with published standards and guidelines for cardiopulmonary resuscitation and emergency cardiac care in which the EMT has demonstrated knowledge and skills in the performance of subcutaneous (SQ) injections, automated external defibrillator (AED) operation, one and two person rescuer cardiopulmonary resuscitation (adult, child, and infant) and relief of foreign body airway obstruction; and

(b) Obtain at least 36 hours of continuing education as specified in Appendix 1, incorporated by reference.

(5) An EMT-Paramedic is required to:

(a) Complete all requirements of the National Registry of EMT-Paramedic re-registration; or

(b) Obtain at least 48 hours of continuing education as specified in Appendix 1, incorporated by reference.

(6) All continuing education credits specified in sections (1) through (5) of this rule shall be completed between the date of the certificate holder's last successful application to the date of the certificate holder's current recertification application.

(7) Continuing education credit shall be granted for:

(a) Attending training seminars, educational conferences, and continuing education classes within the certificate holder's scope of practice;

(b) Attending approved courses for the same or higher level of certification; and

(c) Online continuing education that provides a certificate of completion and is approved by the Continuing Education Coordinating Board for Emergency Medical Services (CECBEMS).

(8) Up to 50 percent of the hours of continuing education credits for each subject listed in section 1 of Appendix 1 may be obtained by:

(a) Watching a video, CD-ROM, or other visual media;

(b) Being an EMT practical certification exam evaluator, if the certificate holder is qualified as such;

(c) Reading EMS journals or articles; and

(d) Teaching any of the topics listed in Appendix 1, if the certificate holder is qualified to teach the subject.

(9) In addition to the hours of continuing education required in this rule, an EMT-Intermediate or EMT-Paramedic certificate holder must, as specified in section 2 of Appendix 1, incorporated by reference, demonstrate skills proficiency through a hands-on competency examination supervised by the EMS Medical Director or his or her designee. An EMS Medical Director may require successful performance in a minimum number of clinical skills in these areas on either human subjects or mannequins (e.g. venipunctures, endotracheal intubations, etc.).

(10) An EMS Medical Director may require additional continuing education requirements and skill competency.

(11) When a certificate holder obtains an initial certificate and there is:

(a) Less than six months until recertification, no continuing education credits are required to obtain recertification;

(b) More than six months but less than one year until recertification, the certificate holder must complete 50 percent of the continuing education credits in each category; or

(c) More than one year until recertification, the certificate holder must complete all continuing education credits.

(12) Continuing education credits are granted on an hour-for-hour basis.

(13) It shall be the responsibility of each certificate holder to ensure the hours obtained meet the Division's recertification requirements.

(14) A certificate holder must submit proof, in a manner prescribed in OAR 333-265-0140 that the continuing education requirements have been met.

(15) Education programs, journals and articles used towards continuing education must be approved by the EMS Medical Director or the Division.

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

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0645; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0045; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10; PH 1-2011, f. & cert. ef. 1-6-11

## Oregon Health Licensing Agency, Board of Direct Entry Midwifery Chapter 332

**Rule Caption:** Standardization of rules, amend definitions, qualification standards, application, education, examination and license posting requirements.

**Adm. Order No.:** DEM 4-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 10-1-2010

**Rules Adopted:** 332-015-0080

**Rules Amended:** 332-015-0000, 332-015-0030, 332-015-0040, 332-015-0050, 332-015-0070

**Rules Repealed:** 332-015-0010, 332-015-0060, 332-015-0065

**Subject:** General amendments to OAR 332 division 15 to align with current industry, agency and statewide rulemaking standards and principles.

Streamline definitions to meet rulemaking protocols and define relevant terms where utilized within the rule for efficiency including defining agency, baby, consultation when used in a non-absolute risk setting, and LDM as a licensed direct entry midwife.

Clarify and streamline application requirements for the following pathways:

Certified Professional Midwives (CPM) Credential and proof of 10 of the 50 births being within two years preceding the date of application.

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Passage of North American Registry of Midwives (NARM) examination within three years preceding the date of application and proof of 10 of the 50 births being within two years preceding the date of application.

Delineate requirements for multiple birth attendants present at the same birth, one must be designated as the primary birth attendant.

Reference by rule general education requirements listed in the NARM CPM candidate information bulletin and the and the NARM examination as the qualifying examination for licensure.

Amend legend drugs and devices initial program with includes realignment of the 40 hours of training to reflect appropriate and actual training needs. Division of treatment of shock and intravenous therapy to allow specific hours in each area of training.

Adopt rule delineating licensure posting requirements for LDMs.

Repeal specific rules to streamline application process and remove redundancies.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

## 332-015-0000

### Definitions

The following definitions apply as used in OAR 332-015-0000 through 332-030-0000.

(1) “Agency” means the Oregon Health Licensing Agency. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(2) “Antepartum” means the period of time before the onset of labor.

(3) “Board” means, pursuant to ORS 687.470, the entity that advises the agency on matters relating to the practice of direct entry midwifery, and determines practice standards, education and training, and provides consultation to the agency on all disciplinary issues in accordance with ORS 687.405 to 687.495.

(4) “Baby” means the fetus and the newborn.

(5) “Consultation” means a dialogue for the purpose of obtaining information or advice from a health care provider by phone, written notes, or in person, which may include, but is not limited to identification of and recommendation regarding management of maternal or fetal conditions.

(6) “Fetal distress” is a condition in which the fetus demonstrates progressive and irresolvable clinical signs of compromise, which may include, but are not limited to, abnormal fetal movement; loss of heart tone variability; non-reassuring fetal heart rate deceleration patterns such as late decelerations; and non-reassuring changes in fetal heart baseline rate.

(7) “Informed Consent” means the consent obtained following a thorough and easily understood explanation of the information to the mother or the mother’s guardian. Refer to OAR 332-025-0080.

(8) “Intrapartum” means the period of time from the onset of labor through the birth of the placenta.

(9) “LDM” means licensed direct entry midwife.

(10) “MANA” means the Midwives Alliance of North America.

(11) “MEAC” means the Midwifery Education and Accreditation Council.

(12) “NARM” means the North American Registry of Midwives.

(13) “Peer review” means the discussion of cases with other health care providers and students for the purpose of obtaining and providing suggestions regarding care.

(14) “Postpartum” means the period of time immediately after and up to eight weeks following the birth of the baby.

(15) “Prenatal” means the period of time from conception to the onset of labor.

(16) “Primary birth attendant” means the midwife who assumes direct responsibility for mother and baby care.

(17) “Sharps” means items that includes needles, intravenous 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.

Stat. Auth.: ORS 687.485

Stats. Implemented: ORS 183.450(7) & 687.485

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 4-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-015-0030

### Application Requirements

An individual applying for licensure to practice direct entry midwifery must:

(1) Meet the requirements of OAR 331 division 30.

(2) Submit a completed application form prescribed by the agency, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application and license fees.

(3) Submit current certification in cardiopulmonary resuscitation for adults, neonates and infants.

(4) Submit documentation of required education in approved legend drugs and devices as provided in OAR 332-015-0070 on a form prescribed by the agency.

(5) Submit a written plan for emergency transport for mother or newborn pursuant to OAR 332-025-0020.

(6) In addition to requirements listed in subsection (1) through (5) of this rule, an applicant must provide documentation of one of the following pathways:

(a) Pathway 1 — Certified Professional Midwives (CPM) Credential:

(A) Submission of satisfactory evidence of having current CPM credential from NARM; and

(B) Pursuant to ORS 687.420, participation as an assistant at 25 deliveries, 25 deliveries for which the applicant was the primary birth attendant, participation in 100 prenatal care visits, 25 newborn examinations, and 40 postnatal examinations. The applicant must have provided continuity care for at least 10 of the primary birth attendant deliveries, including four prenatal visits, one newborn examination and one postpartum exam. Of these 50 births, at least 25 deliveries must have taken place in an out-of-hospital setting and 10 births must have occurred within the two years or 24 months preceding the date of application.

(C) If there is more than one birth attendant present at the same birth, the birth attendants must designate which birth attendant is primary.

(b) Pathway 2 — Passage of NARM Examination:

(A) Submission of satisfactory evidence of passage of the NARM examination within three years preceding the date of application, which must include official documentation of a passing score; and

(B) Pursuant to ORS 687.420, participation as an assistant at 25 deliveries, 25 deliveries for which the applicant was the primary birth attendant, participation in 100 prenatal care visits, 25 newborn examinations, and 40 postnatal examinations. The applicant must have provided continuity care for at least 10 of the primary birth attendant deliveries, including four prenatal visits, one newborn examination and one postpartum exam. Of these 50 births, at least 25 deliveries must have taken place in an out-of-hospital setting and 10 births must have occurred in the two years or 24 months preceding the date of application.

(C) If there is more than one birth attendant present at the same birth, the birth attendants must designate which birth attendant is primary.

Stat. Auth.: ORS 687.420 & 687.485

Stats. Implemented: ORS 687.420 & 687.485

Hist.: DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 4-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-015-0040

### Education

Applicant’s education must incorporate the general educational requirements listed in the NARM CPM candidate information bulletin, including:

(1) Core competencies developed by MANA;

(2) NARM written test specifications;

(3) NARM skills assessment test specifications;

(4) NARM written examination primary reference list; and

(5) NARM skills assessment reference list.

Stat. Auth.: ORS 183, 687.420, 687.480 & 687.485

Stats. Implemented: ORS 183, 687.420, 687.480 & 687.485

Hist.: DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 2-1998, f. 4-14-98, cert. ef. 4-15-98; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 4-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-015-0050

### NARM Midwifery Examination

The qualifying examination is the NARM examination. An applicant is responsible for payment of all fees for NARM applications, examinations, and any other fees paid directly to NARM.

Stat. Auth.: ORS 676.615, 687.480 & 687.485

Stats. Implemented: ORS 676.615, 687.480 & 687.485

Hist.: DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1998, f. 2-27-98, cert. ef. 3-1-98; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 4-2010, f. 12-30-10, cert. ef. 1-1-11

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## 332-015-0070

### Approved Legend Drugs and Devices Prescribed Education

(1) To be granted a license, an applicant must successfully complete the Initial Legend Drugs and Devices Program consisting of 40 clock hours of instruction in the approved curriculum. Each component of the initial program must be completed within the two years or 24 months immediately preceding the date of application. The initial program must be taught by a MEAC accredited or pre-accredited school, the Oregon Midwifery Council, or by an organization authorized by the Board. The program is composed of theory, hands-on practice, and skills testing for competency.

(2) The initial program consists of:

(a) Eight clock hours in Pharmacology covering drugs listed in OAR 332-025-0040 and 332-025-0050;

- (A) Mechanism of Pharmacological Action;
- (B) Indications;
- (C) Therapeutic Effects;
- (D) Side Effects/Adverse Reactions;
- (E) Contraindications;
- (F) Incompatibilities/Drug Interactions; and
- (G) Drug administration including:

(i) Dosage;

(ii) Dosage Form and Packaging;

(iii) Routes of Administration;

(iv) Onset of Action;

(v) Peak Effect; and

(vi) Duration of Action.

(b) Four clock hours of administration of medications through injection, which includes:

(A) Universal precautions including the use and disposal of sharps;

(B) Equipment including:

(i) Needles;

(ii) Filter Needles (for use with glass ampules);

(iii) Syringes;

(iv) Skin surface disinfectants; and

(v) Medication containers (ampules, multi- and single-use vials).

(C) Appropriate injection sites;

(D) Procedures for drawing up and administering drugs;

(E) Special case: Administration of Medications Intravenously; and

(F) Care of equipment.

(c) Four clock hours in advanced treatment of shock, which includes:

(A) Theory of shock; and

(B) Treatment of shock.

(d) Ten clock hours in intravenous therapy, which includes:

(A) Intravenous fluid therapy;

(B) Purpose of IV fluid therapy;

(C) Equipment;

(D) Appropriate sites;

(E) Procedure;

(F) Rate of administration; and

(G) Care of equipment.

(e) Four clock hours in neonatal resuscitation, which includes:

(A) Basic life support techniques;

(B) Cardio-Pulmonary Resuscitation (CPR);

(C) Use of oxygen; and

(D) Positive pressure ventilation (bag, valve, mask).

(f) 10 clock hours in suturing which includes:

(A) Explanation of the pelvic floor and genital anatomy;

(B) Assessing the degree of damage for repair;

(C) Use of local anesthetic;

(D) Equipment including:

(i) Sutures;

(ii) Needles; and

(iii) Instruments.

(E) Use of needle holder and working with curved needle;

(F) Knot tying (instrument knot);

(G) Basic stitching techniques including:

(i) Interrupted;

(ii) Basting;

(iii) Lock Blanket; and

(iv) Running mattress.

(H) Repairing a simple first-degree tear;

(I) Repairing a second-degree tear; and

(J) Repairing a third-degree tear.

(3) A copy of Board-approved curriculum objectives will be retained on file at the agency and made available upon receipt of a written request

and payment of an administrative fee for acquiring public records. Refer to OAR 331-010-0030.

Stat. Auth.: ORS 676.615, ORS 687.485 & 687.493

Stats. Implemented: ORS 676.615, ORS 687.485 & 687.493

Hist.: DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 2-2008(Temp), f. 9-15-08 cert. ef. 10-1-08 thru 3-30-09; DEM 1-2009, f. 3-31-09, cert. ef. 4-1-09; DEM 4-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-015-0080

### License Display and Posting Requirements

(1) A licensee must show proof of valid license with the agency upon request or post the license document in public view at the licensee's primary workplace.

(2) A licensee may temporarily conceal the address printed on the license document with a covering that is removable.

(3) A licensee must carry the license identification card (pocket card), or post in plain view, the official license anytime services are being provided.

Stat. Auth.: ORS 687.485 & 687.615

Stats. Implemented: ORS 687.425, 687.485, 676.606 & 676.607

Hist.: DEM 4-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Standardization of rules, amend requirements for renewal, late renewal, continuing education, data collection and fees.

**Adm. Order No.:** DEM 5-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 10-1-2010

**Rules Adopted:** 332-020-0017

**Rules Amended:** 332-020-0000, 332-020-0010, 332-020-0015, 332-020-0020

**Rules Repealed:** 332-020-0020(T)

**Subject:** General amendments to OAR 332 division 20 to align with current industry, agency and statewide rulemaking standards and principles.

Align renewals with agency standards and protocols, including renewal, inactive renewal up to three years, and expired renewal requiring reapplication under one of two pathways. Added requirements for renewal and late renewal including proof of current neonatal resuscitation and MANAstats reporting.

Reduce timeframe required to obtain continuing education in legend drugs and devices for renewal to two years to align with other continuing education requirements. Reduce number of continuing education hours required for legend drugs and devices from 12.5 to eight and a half hours and specify how many hours in each subject. Amend procedure for the continuing education audit process.

Adopt rule to align with statutory provisions pursuant to ORS 687.495 regarding data collection. Requires that all licensees report to a national database (MANAstats) through the Midwifery Alliance of North American (MANA) beginning June 2011 and send an individual report to the agency upon renewal beginning in June 2012.

Align fees with statutory provisions pursuant to ORS 687.435, by establishing a reactivation fee and ORS 676.615 by establishing a dormant renewal fee. Amend number of years a licensee can renew late up to three years to align with renewal requirements and agency protocol. Adopt temporary rule permanently regarding \$500 original issuance license fee discount.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

## 332-020-0000

### License Issuance and Renewal

(1) **LICENSING:** A licensee is subject to the provisions of OAR Chapter 331, division 30 regarding the issuance and renewal of a license, and provisions regarding authorization to practice, identification, and requirements for issuance of a duplicate license.

(2) **LICENSE RENEWAL:** License renewal must be made prior to the license entering inactive status. The licensee must submit the following:

(a) Renewal application form;

(b) Payment of required renewal fee;

(c) Attestation of having obtained required continuing education including legend drugs and devices pursuant to OAR 332-020-0010;



# ADMINISTRATIVE RULES

(d) Evidence of current certification in cardiopulmonary resuscitation for adults and infants;

(e) Evidence of current certification in neonatal resuscitation;

(f) Evidence of having completed peer review documented on a form prescribed by the agency pursuant to 332-025-0020; and

(g) Submit a copy of individual MANAstats practice report pursuant to OAR 332-020-0017.

(3) **INACTIVE LICENSE RENEWAL:** License renewal made after the license enters inactive status. A license may be inactive for up to three years. The licensee must submit the following:

(a) Renewal application form;

(b) Payment of delinquency and license fees pursuant to OAR 332-020-0020;

(c) Attestation of having obtained required continuing education including legend drugs and devices pursuant to OAR 332-020-0010;

(d) Evidence of current certification in cardiopulmonary resuscitation for adults and infants;

(e) Evidence of current certification in neonatal resuscitation; and

(f) Evidence of having completed peer review on a form prescribed by the agency pursuant to 332-025-0020.

(g) Submit a copy of individual MANAstats practice report pursuant to OAR 332-020-0017.

(4) **EXPIRED LICENSE:** A license that has been inactive for more than three years is expired and must meet the requirements listed in OAR 332-015-0030.

(5) A licensee failing to meet continuing education requirements listed under OAR 332-020-0010 must reapply and meet requirements pursuant to OAR 332-015-0030.

Stat. Auth.: ORS 676.605, 676.615, 687.420, 687.425, 687.430, 687.485 & 687.493  
Stats. Implemented: ORS 676.605, 676.615, 687.420, 687.425, 687.430, 687.485 & 687.493  
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 1-2008, f. 9-15-08 cert. ef. 10-1-08; DEM 5-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-020-0010

### Continuing Education

(1)(a) **HOURLY REQUIREMENTS:** To qualify for license renewal an LDM must complete approved continuing education requirements as follows:

(b) Two years from the date of initial licensure and every two years thereafter:

(A) Thirty clock hours relevant to women's health, neonatal, fetal or midwifery knowledge or care, ethics, communication, or professional development.

(B) Eight and a half clock hours pertaining to legend drugs and devices that include the components listed under OAR 332-015-0070 with the exception of neonatal resuscitation under OAR 332-015-0070(e), which is required annually upon renewal. The eight and a half hours pertaining to legend drugs and devices must be taught by a MEAC accredited or pre-accredited school, the Oregon Midwifery Council or by an organization authorized by the board.

(i) One hour in pharmacology;

(ii) One half hour in administration of medications through injection;

(iii) One hour in advanced treatment of shock;

(iv) Three hours in intravenous therapy; and

(v) Three hours in suturing.

(2) **CONTINUING EDUCATION PROVIDERS/SPONSORS:**

Continuing education includes attendance or participation at an instructional program presented, recognized, or under the auspices of any board approved institution or professional organization or association.

(3) **CONTINUING EDUCATION PATHWAYS:**

(a) Attendance at lectures, post-secondary school or postgraduate courses, scientific sessions at conventions, courses offered by an agency or board approved association or licensed/accredited school, classes or courses offered through an institution such as the American Red Cross, hospitals, health care clinics, correspondence courses or internet courses.

(b) Continuing education relating to subject matter listed in subsection (1)(a)(A) of this rule may also be obtained through research or teaching (provided that no more than half the required hours be in teaching).

(c) Up to nine clock hours of continuing education relating to subject matter listed in subsection (1)(a)(A) of this rule may be completed through self-study and documented on forms provided by the agency.

(4) **DOCUMENTATION REQUIREMENTS:** Submission to the agency of proof of participation in continuing education is the responsibility of the LDM. The following provisions specify requirements for documenting completion of continuing education:

(a) Documentation must include the name of the sponsoring institution, association or organization, title of presentation, description of content, name of instructor or presenter, date, duration in hours, and license or statement of attendance or completion provided by the sponsor.

(b) Documentation verifying completion of all required continuing education must be accumulated and held by the LDM for two years following any reporting period, or until notification of audit is received. Continuing education documentation must be available and provided to the agency upon request. Refer to OAR 332-020-00105.

(5) **ADDITIONAL REQUIREMENTS AND PROVISIONS:** In addition to other requirements specified in this rule section, the following provisions apply toward meeting continuing education requirements as a condition of license renewal:

(a) In accordance with ORS 687.425 a licensee who has attended fewer than ten births in the previous two years is required to take an additional ten hours of continuing education in subjects listed in subsection (1)(a)(A) of this rule.

(b) Hours of continuing education that are obtained in excess of the minimum requirements listed in this rule will not be carried forward as credit for the subsequent license renewal reporting cycle.

(c) Continuing education is required for renewal even if the LDM license has been inactive, revoked or suspended during that period.

Stat. Auth.: ORS 676.615, 687.425 & 687.485  
Stats. Implemented: ORS 676.615, 687.425 & 687.485  
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 2-2008(Temp), f. 9-15-08 cert. ef. 10-1-08 thru 3-30-09; DEM 1-2009, f. 3-31-09, cert. ef. 4-1-09; DEM 5-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-020-0015

### Continuing Education: Audit, Required Documentation and Sanctions

(1) The agency will audit a select percentage of licenses determined by the board to verify compliance with continuing education requirements.

(2) A licensee notified of selection for audit of continuing education attestation must submit to the agency, within 30 calendar days from the date of notification, satisfactory evidence of participation in required continuing education in accordance with OAR 332-020-0010.

(3) If selected for audit, the licensee must provide documentation of the required continuing education, which must include:

(a) Certificate of completion, official transcript, statement or affidavit from the sponsor attesting to attendance or other documentation approved by the agency.

(b) Name of sponsoring institution/association or organization;

(c) Title of presentation and description of content;

(d) Name of instructor or presenter;

(e) Date of attendance and duration in hours; and

(f) Course agenda.

(4) If documentation of continuing education is incomplete, the licensee has 30 calendar days from the date of notice to submit further documentation to substantiate having completed the required continuing education.

(5) Failure to meet continuing education requirements shall constitute grounds for disciplinary action, which may include but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 687.425 & 687.485  
Stats. Implemented: ORS 687.425 & 687.485  
Hist.: DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 5-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-020-0017

### Reporting Requirements

(1) In accordance with ORS 687.495 an individual licensed as an LDM must submit data on every mother and baby electronically to the MANAstats Project on any form prescribed by MANA, and in accordance with the policies and procedures established by MANA. A licensee must:

(a) Begin data collection with MANA for each mother who initiates care as of June 1, 2011; and

(b) Submit a copy of their individual MANAstats practice report annually to the agency at the time of license renewal, beginning June 2012.

(2) A licensee is required to notify the agency of the number of mothers who decline consent to participate in the MANAstats data collection system annually on a form prescribed by the agency.

(3) When a mother declines consent to participate in the MANAstats data collection, the licensee must provide de-identified mother and baby data to the agency on a form prescribed by the agency. If there are multiple licensees present at the same birth, the licensees must determine which licensee will report to the agency.

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Stat. Auth.: ORS 687.485 & 676.615  
Stats. Implemented: ORS 687.425, 687.435, 687.485, 687.495, 676.606 & 676.607  
Hist.: DEM 5-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-020-0020

### Fees

(1) An applicant and licensee are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency are as follows:

(a) Application:

(A) License: \$150.

(B) License by reciprocity: \$750.

(b) Examination — Oregon laws & rules: \$50.

(c) Original issuance of license (including by reciprocity): \$630 for one year.

(d) Renewal — License: \$630 for one year;

(e) Reactivation of license: \$150.

(f) Other administrative fees:

(A) Delinquency fee: \$50 for each year in expired status up to three years.

(B) Replacement of license, including name change: \$25.

(C) Duplicate license document: \$25 per copy, with a maximum of three.

(D) Affidavit of licensure for reciprocity: \$50.

(E) An additional \$25 administrative processing fee will be assessed if a non-sufficient funds or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.

(3) Applicants for original issuance of direct entry midwifery licensure may be granted a \$500 original issuance of license fee discount, upon application for licensure. This license fee discount is available to fully qualified direct entry midwife applicants residing in Oregon, as long as funding remains available, and only to those fully qualified applicants who have not previously held direct entry midwife licensure in Oregon. To be eligible for this discount, applicants must meet all qualifications in accordance with OAR 332-015-0000, 332-015-0010 and 332-015-0030.

Stat. Auth.: ORS 676.605, 676.615, 687.435 & 687.485

Stats. Implemented: ORS 676.605, 676.615, 687.435 & 687.485

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-1997(Temp), f. 7-22-97, cert. ef. 7-23-97; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 1-2008, f. 9-15-08 cert. ef. 10-1-08; DEM 1-2010(Temp), f. 3-31-10, cert. ef. 4-1-10 thru 9-13-10; DEM 2-2010, f. & cert. ef. 9-9-10; DEM 3-2010(Temp), f. 9-29-10, cert. ef. 10-1-10 thru 3-30-11; DEM 5-2010, f. 12-30-10, cert. ef. 1-1-11

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**Rule Caption:** Clarify guidelines for risk criteria and practice/care standards. Create standard for information/ethics/terminating care.

**Adm. Order No.:** DEM 6-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 10-1-2010

**Rules Adopted:** 332-025-0070, 332-025-0080, 332-025-0100

**Rules Amended:** 332-025-0020, 332-025-0021, 332-025-0022, 332-025-0030, 332-025-0040, 332-025-0050, 332-025-0060, 332-030-0000

**Subject:** General amendments to OAR, chapter 332 division 25 and 30 to align with current industry, agency and statewide rulemaking standards and principles.

Align with current industry general practice standards to allow for flexibility and efficiency as well as support statutory requirements. Delineate requirements for multiple birth attendants present at the same birth, one must be designated as the primary birth attendant. Require risk assessment criteria be provided with the patient disclosure form and signature/date of client attesting to receipt and understanding of the emergency transport plan. Requires LDM to maintain current certification in cardiopulmonary resuscitation for adults and infants and current certification in neonatal resuscitation and register all births with Department of Human Services (DHS) Vital Records Section. Remove DHS requirements regarding vitamin K and ophthalmic prophylaxis and add to mother and baby practice standards under newborn care.

Amendments made to risk assessment practice standards to align with midwifery and medical standards for client safety including

mother and baby. Additions made to “absolute risk” where “transfer of care” for the mother and/or baby is required. “Absolute risk” has been made more inclusive to reflect the potential or actual risk that some situations or special circumstances may impose in an out-of-hospital birth including certain breech presentation, multiple gestation, post dates and vaginal birth after cesarean. Additions made to “non-absolute risk” where the licensee must “transfer care” or consult, discuss and document discussion of information including contrary actions. Clarification made to “non-absolute risk” include defining transfer of care, consultation and Oregon licensed health care provider to ensure licensees have clear guidelines and expectations.

Align mother and baby practice standards, previously standards of care, with current industry standards by referencing the current Midwifery Alliance of North America (MANA) core competencies, including antepartum, intrapartum and newborn care. Provide guidelines for fetal surveillance testing by 41 weeks and three days and establish procedure for evaluating fetal heart rate. Clarify declining protocols to include mother declining vitamin K and ophthalmic prophylaxis and DHS rule reference and requirements.

Align legend drugs and devices with current industry standards including adding instruments for completing a repair to the list of approved devices.

Adopt rule to clarify licensee’s requirements for records of care practice standards including readability, maintenance and content.

Adopt rule to establish requirements for informed consent and risk information practice standards including defining informed consent to mean, “the consent obtained following a thorough and easily understood explanation of the information to the mother or mother’s guardian.” The rule provides guidelines for how and what information must be provided to mother. Requires that LDM provide each mother with risk information regarding an out-of hospital birth and special circumstance birth including breech, twin and multiple gestation, vaginal birth after cesarean, and post date birth. The risk information would be standardized and updated by the board and the agency. Requirements for risk information would begin on June 1, 2011.

Adopt rule to provide guidance to licensees regarding practice standards for terminating midwifery care in a non-emergency and emergency situation. Rule clarifies the LDM’s role if the mother refuses transfer of care.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

## 332-025-0020

### General Practice Standards

Pursuant to ORS 687.480, licensees must comply with the following practice standards when, advising the mother and in rendering antepartum, intrapartum and postpartum care.

(1) A licensee must include the designation LDM after the licensee’s name when completing birth certificates; and

(2) As a condition of license renewal, licensees must participate in peer review meetings in their regions or in conjunction with professional organization meeting(s), which must include, but are not limited to, the discussion of cases and obtaining feedback and suggestions regarding care. Documentation must be made on forms approved by the board. Licensees must participate in peer review according to the following schedule:

(a) Once per year if the licensee served as the primary birth attendant at 40 or fewer births during the license year; or

(b) Twice per year if the licensee served as the primary birth attendant at more than 40 births during the license year.

(c) For the purpose of reporting peer review, if there is more than one birth attendant present at the same birth, the birth attendants must designate which birth attendant is primary.

(3) In accordance with ORS 687.480 and 687.493 a licensee must maintain equipment necessary to: assess maternal, fetal and newborn well being; maintain aseptic technique; respond to emergencies requiring immediate attention; and to resuscitate mother and newborn when attending an out-of-hospital birth.

(4) A licensee must dispose of pathological waste resulting from the birth process in accordance with the Department of Human Services Public Health Division under OAR 333 Division 056. Provisions include:

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(a) Incineration, provided the waste is properly containerized at the point of generation and transported without compaction to the site of incineration; or

(b) Burial on private property if burial of human remains on such property is not prohibited or regulated by a local government unit at the designated site.

(5) Licensees must dispose of biological waste materials that come into contact with blood and/or body fluids in a sealable plastic bag (separate from sealable trash or garbage liners) or in a manner that protects the licensee, mother, baby, and others who may come into contact with the material during disposal. Biological wastes may also be incinerated or autoclaved in equipment dedicated to treatment of infectious wastes.

(6) Licensees must dispose of sharps that come into contact with blood or bodily fluids in a sealable, (puncture proof) container that is strong enough to protect the licensee, mother, baby and others from accidental cuts or puncture wounds during the disposal process.

(7) Sharps must be placed into appropriate containers at the point of generation and may be transported without compaction to a landfill having an area designed for sharps burial or transported to an appropriate health care facility equipped to handle sharps disposal, provided the lid of the container is tightly closed or taped to prevent the loss of content and the container is appropriately labeled.

(8) Licensees must maintain a "patient disclosure form" providing current and accurate information to prospective clients. Licensees must provide the mother with this information. This statement must include, but is not limited to:

- (a) Philosophy of care;
- (b) Midwifery training and education;
- (c) Clinical experience;
- (d) Services provided to mother and baby;
- (e) Types of emergency medications and equipment used;
- (f) Responsibilities of the mother and her family;
- (g) Fees for services including financial arrangements;
- (h) Malpractice coverage;
- (i) Risk assessment criteria as listed in OAR 332-025-0021; and
- (j) Signature of mother and date of signature documenting discussion and receipt of patient disclosure form.

(9) A licensee must maintain a plan for emergency transport and must discuss the plan with the mother. The plan must include, but is not limited to:

- (a) Place of transport;
- (b) Mode of transport;
- (c) Provisions for hospital and physician support including location and telephone numbers; and
- (d) Availability of private vehicle or ambulance including emergency delivery equipment carried in the vehicle.

(10) Signature of mother and date of signature documenting discussion of emergency transport plan must be placed in the mother's record.

(11) A licensee must maintain complete and accurate written records documenting the course of midwifery care as listed under OAR 332-025-0070.

(12) A licensee must maintain current certification in cardiopulmonary resuscitation for adults and infants and current certification in neonatal resuscitation.

(13) All births must be registered with the Department of Human Services Vital Records Section, as provided in ORS chapter 432.

Stat. Auth.: ORS 676.605, 676.615, 687.480 & 687.485  
Stats. Implemented: ORS 676.605, 676.615, 687.480 & 687.485  
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 2-1998, f. 4-14-98, cert. ef. 4-15-98; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-01; DEM 3-2000, f. 9-29-00, cert. ef. 10-1-00; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; Administrative correction 11-7-01; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-025-0021

### Risk Assessment Practice Standards

Licensees must assess the appropriateness of an out-of-hospital birth taking into account the health and condition of the mother and baby according to the following absolute and non-absolute risk criteria:

(1) "Absolute risk" as used in this rule means conditions or clinical situations of obstetrical or neonatal risk that cannot be resolved and that preclude out-of-hospital birth. If the mother or baby presents with any absolute risk factors, the LDM must:

(a) During the antepartum period, plan for transfer of care and an in-hospital birth;

(b) During the intrapartum period, arrange transportation to the hospital and transfer of care unless the birth is imminent;

(c) When the birth is imminent, take the health and condition of the mother and baby and conditions for transport into consideration in determining whether to proceed with out-of-hospital birth or to arrange for transportation to a hospital and transfer of care;

(d) During the postpartum period, arrange for transportation of mother or baby to a hospital and transfer of care;

(2) The following constitute absolute risk factors:

(a) ANTEPARTUM ABSOLUTE RISK CRITERIA:

- (A) Active cancer;
- (B) Cardiac condition with hemodynamic consequences;
- (C) Severe renal disease — active or chronic;
- (D) Severe liver disease — active or chronic;
- (E) Uncontrolled hyperthyroidism;
- (F) Chronic obstructive pulmonary disease;
- (G) Essential chronic hypertension over 140/90;
- (H) Pre-eclampsia/eclampsia;
- (I) Current venous thromboembolic disease;
- (J) Current substance abuse known to cause adverse effects for the mother or baby;

(K) Incomplete spontaneous abortion;

(L) Hemoglobin under nine at term;

(M) Placental abruption;

(N) Placenta less than 2.0 centimeters from internal os at onset of labor;

(O) Persistently or severely abnormal quantity of amniotic fluid;

(P) Signs and symptoms of chorioamnionitis;

(Q) Ectopic pregnancy;

(R) Pregnancy lasting longer than 43 weeks gestation (21 days past the due date);

(S) Any pregnancy with abnormal fetal surveillance tests;

(T) Active acquired immune deficiency syndrome (AIDS);

(U) Higher order multiples (three or more);

(V) Monochorionic, monoamniotic twins;

(W) Twin-to-twin transfusion;

(X) Presenting twin transverse;

(Y) Three cesarean sections unless previous successful vaginal birth;

(Z) Placenta accreta, percreta or increta;

(AA) Non-cephalic presentation except as noted in non-absolute risk criteria;

(BB) Previous classical uterine incision, T-incision, prior uterine rupture or extensive transfundal surgery;

(CC) Four or more cesarean sections; and

(DD) Pre-existing diabetes requiring oral medication or insulin.

(b) INTRAPARTUM ABSOLUTE RISK CRITERIA:

(A) Documented intrauterine growth restriction at term;

(B) Suspected uterine rupture;

(C) Prolapsed cord or cord presentation;

(D) Suspected complete or partial placental abruption;

(E) Suspected placenta previa;

(F) Signs and symptoms of chorioamnionitis;

(G) Pre-eclampsia/eclampsia;

(H) Thick meconium-stained amniotic fluid without reassuring fetal heart tones and birth is not imminent;

(I) Evidence of fetal distress or abnormal fetal heart rate pattern unresponsive to treatment or inability to auscultate fetal heart tones;

(J) Excessive vomiting, dehydration, acidosis or exhaustion unresponsive to treatment;

(K) Blood pressure greater than or equal to 150/100 which persists or rises, and birth is not imminent;

(L) Labor or premature rupture of membrane less than 35 weeks according to estimated due date;

(M) Current substance abuse known to cause adverse effects for the mother or baby;

(N) Retained placenta with suspected placenta accreta;

(O) Active herpes lesion in an unprotectable area;

(P) Primary herpes outbreak in labor; and

(Q) Footling breech when a foot or knee is presenting, except if well applied to the buttocks, as determined by vaginal examination.

(c) MATERNAL POSTPARTUM ABSOLUTE RISK CRITERIA:

(A) Retained placenta with suspected placenta accreta;

(B) Retained placenta with abnormal or significant bleeding;

(C) Laceration requiring hospital repair including but not limited to fourth-degree lacerations;



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- (D) Uncontrolled postpartum bleeding;
  - (E) Increasingly painful or enlarging hematoma;
  - (F) Development of pre-eclampsia; and
  - (G) Signs or symptoms of shock unresponsive to treatment.
- (d) **INFANT ABSOLUTE RISK CRITERIA:**
- (A) Apgar less than 7 at 10 minutes of age;
  - (B) Respiration rate greater than 100 within the first two hours postpartum, and greater than 80 thereafter, lasting more than one hour without improvement;
  - (C) Persistent nasal flaring, grunting, or retraction after one hour of life without improvement;
  - (D) Seizures;
  - (E) Apnea;
  - (F) Central cyanosis;
  - (G) Large or distended abdomen;
  - (H) Any condition requiring more than 12 hours of observation post-birth;
- (I) Persistent poor suck, hypotonia or a weak or high-pitched cry;
- (J) Persistent inability to maintain temperature between 97-100 degrees Fahrenheit;
- (K) Persistent projectile vomiting or emesis of fresh blood; and
  - (L) Signs and symptoms of infection in the infant.
- (3) "Non-absolute" means a condition or clinical situation that places a mother or baby at increased obstetric or neonatal risk, but does not automatically exclude a mother and baby from an out-of-hospital birth.
- (4) When a mother or baby presents with one or more non-absolute risk factors, the LDM must:
- (a) Arrange for the transfer of care of the mother or baby; or
  - (b) Comply with all of the following:
    - (A) Consult with at least one Oregon licensed health care provider regarding the non-absolute risk factors present.
    - (B) Discuss the non-absolute risk(s) with the mother, including:
      - (i) Possible adverse outcomes;
      - (ii) Whether an out-of-hospital birth is a reasonably safe option based upon the risk(s) present;
      - (iii) The anticipated risk(s) and the likelihood of reducing or eliminating said risks;
      - (iv) The midwife's experience with said risk(s);
      - (v) The ease and time involved in accomplishing transport or transfer of care;
      - (vi) Recommendation(s) given by the consulting Oregon licensed health care provider(s); and
      - (vii) Recommendation(s) given by the LDM to the mother.
    - (C) Document discussion of information listed in subsection (B).
    - (D) To the extent the LDM acts contrary to the recommendations given by the consulting Oregon licensed health care provider, the LDM must document the justification.
    - (E) Informed consent must be obtained and documented in records.
- (5) The following are non-absolute risk factors:
- (a) **MATERNAL ANTEPARTUM NON-ABSOLUTE RISK CRITERIA:**
- (A) Conditions that could negatively affect maternal or fetal status that require ongoing medical supervision or ongoing use of medications;
  - (B) Inappropriate fetal size for gestation;
  - (C) Significant second or third trimester bleeding;
  - (D) Abnormal fetal cardiac rate or rhythm;
  - (E) Decreased fetal movement;
  - (F) Uterine anomaly;
  - (G) Anemia (hematocrit less than 30 or hemoglobin less than 10 at term);
  - (H) Seizure disorder requiring prescriptive medication;
  - (I) Platelet count of less than 75,000;
  - (J) Isoimmunization to blood factors;
  - (K) Psychiatric disorders;
  - (L) History of thrombophlebitis and hemoglobinopathies;
  - (M) Dichorionic, diamniotic twins;
  - (N) Monochorionic, diamniotic twins;
  - (O) Known fetal anomalies that require medical attention at birth;
  - (P) Two cesarean sections without previous successful vaginal birth;
  - (Q) Three cesarean sections with a previous successful vaginal birth;
  - (R) Blood coagulation defect;
  - (S) Significant glucose intolerance unresponsive to dietary and exercise intervention;
  - (T) Gestational diabetes well controlled with diet or oral glycemic medications; and
- (U) Primary herpes outbreak.
- (b) **INTRAPARTUM NON-ABSOLUTE RISK CRITERIA:**
- (A) No prenatal care or unavailable records;
  - (B) History of substance abuse during this pregnancy;
  - (C) Signs and symptoms of infection including but not limited to a temperature 100.4 degrees Fahrenheit or higher with adequate hydration in the mother;
  - (D) Labor or premature rupture of membrane from 35 to 36 weeks gestation;
  - (E) Frank and complete breech presentation, as determined by vaginal examination;
  - (F) Lack of adequate progress in second stage:
    - (i) Lack of adequate progress in vertex presentation is when there is no progress after a maximum of three hours in cases with full dilation, ruptured membranes, strong contractions and sufficient maternal effort; and
    - (ii) Lack of adequate progress in breech presentation is when there is no progress in descent after a maximum of one hour in cases with full dilation, ruptured membranes, strong contractions and sufficient maternal effort.
  - (c) **MATERNAL POSTPARTUM NON-ABSOLUTE RISK CRITERIA:**
    - (A) Signs and symptoms of infection;
    - (B) Any condition requiring more than 12 hours of postpartum observation;
    - (C) Retained placenta greater than two hours with no unusual bleeding;
    - (D) Evidence of urinary retention that cannot be resolved in an out-of-hospital setting; and
    - (E) Third-degree lacerations if LDM is qualified and has documented training.
  - (d) **INFANT NON-ABSOLUTE RISK CRITERIA:**
    - (A) Apgar less than 7 at five minutes without improvement;
    - (B) Weight less than 2,270 grams (five lbs.);
    - (C) Failure to void within 24 hours or stool within 48 hours from birth;
      - (D) Excessive pallor, ruddiness, or jaundice at birth;
      - (E) Any generalized rash at birth;
      - (F) Birth injury such as facial or brachial palsy, suspected fracture or severe bruising;
      - (G) Baby with signs and symptoms of hypoglycemia unresolved in the out-of-hospital setting;
      - (H) Weight decrease in excess of 10 percent of birth weight that does not respond to treatment;
      - (I) Maternal-infant interaction problems;
      - (J) Direct Coomb's positive cord blood;
      - (K) Infant born to HIV positive mother;
      - (L) Suspected or evident major congenital anomaly;
      - (M) Estimated gestational age of less than 35 weeks;
      - (N) Maternal substance abuse identified postpartum; and
      - (O) Cardiac irregularities, heart rate less than 80 or greater than 160 (at rest) without improvement, or any other abnormal or questionable cardiac findings.
    - (6) For the purpose of this rule "transfer of care" means the process whereby any LDM who has been providing care relinquishes this responsibility to a hospital or to licensees under ORS chapter 682.
    - (a) The LDM must provide the following at the time of transfer, to the hospital or licensees under ORS chapter 682: medical history, prenatal flow sheet, diagnostic studies, laboratory findings, and maternal and baby care notes through time of transfer;
    - (b) In cases of emergency, at the time of transfer, the LDM must provide the records required in subsection (a) to the hospital or licensees under ORS chapter 682, including notes for care provided during the emergency, if available. If notes are not available, an oral summary of care during the emergency must be made available to the hospital or licensees under ORS chapter 682; and
    - (c) Under no circumstances shall the midwife leave the mother or baby until such a time that transport is arranged and another Oregon licensed health care provider or a licensee under ORS chapter 682 assumes care.
    - (7) For the purpose of this rule "consultation" means a dialogue for the purpose of obtaining information or advice from an Oregon licensed health care provider who has direct experience handling complications of the risk(s) present, as well as the ability to confirm the non-absolute risk, which may include, but is not limited to confirmation of a diagnosis and recommendation regarding management of medical, obstetric, or fetal

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problems or conditions. Consultation may be by phone, in person or in writing.

(8) For the purpose of this rule "Oregon licensed health care provider" means a physician or physician assistant licensed under ORS 677, a certified nurse midwife or nurse practitioner licensed under ORS 678, a naturopath licensed under ORS 685, or a licensee under ORS 687.

Stat. Auth.: ORS 676.605, 676.615, 687.480 & 687.485  
Stats. Implemented: ORS 676.605, 676.615, 687.480 & 687.485  
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 2-1998, f. 4-14-98, cert. ef. 4-15-98; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-01; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-01; DEM 3-2000, f. 9-29-00, cert. ef. 10-1-00; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; Administrative correction 11-7-01; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-025-0022

### Mother and Baby Care Practice Standards

(1) An LDM may:

(a) Order and receive laboratory and ultrasound results;

(b) Fit barrier methods of contraception at the six-week check up, if qualified to fit barrier methods of contraception.

(2) For mother and baby care practice standards the agency and board adopt by reference the MANA core competencies, current version as approved by MANA. Reference <http://mana.org/manacore.html> for current version.

(3) In addition to and not in lieu of the MANA core competencies, an LDM must adhere to the following mother and baby care practice standards:

(a) Care During Pregnancy (Antepartum) - The LDM must:

(A) Provide health care, support and information to the mother throughout pregnancy;

(B) Determine the need for consultation or referral as appropriate;

(C) Provide a mechanism that ensures 24 hour coverage for the practice;

(D) Assess, identify, evaluate and support maternal and fetal well-being throughout the process of pregnancy;

(E) Thoroughly educate and counsel mother regarding the childbearing cycle;

(F) Identify preexisting conditions in a woman's health history that are likely to influence her well-being when she becomes pregnant;

(G) Educate mother regarding nutritional requirements of pregnant mother and provide methods of nutritional assessment and counseling;

(H) Educate mother regarding changes in emotional, psychosocial and sexual variations that may occur during pregnancy;

(I) Identify and educate mother regarding environmental and occupational hazards for pregnant mother.

(J) Educate mother regarding genetic factors that may indicate the need for counseling, testing or referral;

(K) Educate mother regarding the growth and development of the unborn baby;

(L) Identify and educate mother regarding indications for, risks and benefits of bio-technical screening methods and diagnostic tests used during pregnancy;

(M) Educate mother regarding anatomy, physiology and evaluation of the soft and bony structures of the pelvis;

(N) Exercise palpation skills for evaluation of the fetus and uterus;

(O) Assess and educate mother regarding causes and treatment of the common discomforts of pregnancy;

(P) Identify implications of and appropriate treatment for various infections, disease conditions and other problems that may affect pregnancy;

(Q) Identify and educate of special needs of the Rh(D)-negative woman;

(R) Arrange for fetal surveillance testing by 41 weeks and three days by recommending one or more of the following:

(i) Biophysical profile weekly and non-stress test bi-weekly; or

(ii) Amniotic fluid index and non-stress test bi-weekly;

(b) Care During Labor, Birth and Immediately Thereafter (Intrapartum) — the LDM must:

(A) Provide health care, support and information to the mother throughout labor, birth and the hours immediately thereafter;

(B) Determine the need for consultation or referral as appropriate;

(C) Make appropriate and ongoing risk assessment and document maternal and fetal status and response throughout labor;

(D) Evaluate maternal and fetal well-being during labor, birth and immediately thereafter, including relevant historical data;

(E) For mothers and babies without signs of risk factors, during the active phase of the first stage of labor, evaluate the fetal heart rate at least every 30 to 60 minutes, listening toward the end of a contraction and for at least 30 seconds after;

(F) For mothers and babies with risk factors, auscultate fetal heart tones more frequently than every 30 to 60 minutes and listen through contractions as indicated in the active stage of labor;

(G) Auscultate fetal heart tones approximately every 5 to 10 minutes or after every contraction, as indicated, with active pushing;

(H) Assess birthing environment, assuring that it is clean, safe and supportive, and that appropriate equipment and supplies are on hand;

(I) Assess emotional responses and their impact during labor, birth and immediately thereafter;

(J) Provide comfort and support measures during labor, birth and immediately thereafter;

(K) Evaluate fetal and maternal anatomy and their interactions as relevant to assessing fetal position and the progress of labor;

(L) Utilize techniques to assist and support the spontaneous vaginal birth of the baby and placenta;

(M) Assess and meet fluid and nutritional requirements during labor, birth and immediately thereafter;

(N) Assess and support maternal rest and sleep as appropriate during the process of labor, birth and immediately thereafter;

(O) Assess causes of, evaluate and treat variations that occur during the course of labor, birth and immediately thereafter;

(P) Provide appropriate support for the newborn's transition during the first minutes and hours following birth;

(Q) Evaluate and care for perineum and surrounding tissues; and

(R) Before the LDM leaves or the family is discharged, the placenta must be delivered and the mother's general condition, blood pressure, pulse, temperature, fundus, lochia, and ability to ambulate and urinate must be assessed. Mother's and baby's condition must be found to be within normal limits.

(c) Care After Delivery (Postpartum Care) — The LDM must:

(A) Provide health care, support and information to the mother throughout the postpartum period;

(B) Determine the need for consultation or referral as appropriate;

(C) Assess anatomy and physiology of the mother during the postpartum period;

(D) Educate mother regarding lactation support and appropriate breast care including evaluation of, identification of and treatments for problems with nursing;

(E) Evaluate and promote maternal well-being;

(F) Assess causes of, evaluate and treat maternal discomfort;

(G) Evaluate and educate emotional, psychosocial and sexual variations;

(H) Monitor and educate mother regarding maternal nutritional requirements during including methods of nutritional evaluation and counseling;

(I) Assess causes of, evaluate and treat problems arising during the postpartum period, consulting as necessary;

(J) Provide family with written and verbal postpartum instructions; and

(K) Provide support, information and referral for family planning methods, as the individual woman desires.

(d) Newborn Care — The LDM must:

(A) Provide health care to the newborn;

(B) Provide support and information to parents regarding newborn care;

(C) Determine the need for consultation or referral as appropriate;

(D) Evaluate anatomy and physiology of newborn and support of the newborn's adjustment during the first days and weeks of life;

(E) Evaluate newborn wellness including relevant historical data and gestational age;

(F) Assess and educate the mother regarding nutritional needs of the newborn;

(G) Educate mother regarding state laws concerning indications for, administration of, and the risks and benefits of prophylactic bio-technical treatments and screening tests commonly used during the neonatal period;

(H) Educate mother regarding causes of, assessment of, appropriate treatment and emergency measures for newborn problems and abnormalities;

(I) Adhere to state guidelines for the administration of vitamin K and ophthalmic prophylaxis pursuant to ORS 433.306 and OAR 333-021-0800; and

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(J) Ensure infant metabolic screening is performed and documented according to the Department of Human Services recommendations unless the mother declines, as provided ORS Chapter 432 and OAR 333-024-0205 through 0235.

(4) Declined Procedure: In the event the mother refuses any testing or procedures required by administrative rule or recommended by the LDM, the LDM must document discussion with the mother of why the test or procedure is required or recommended, and document the mother's refusal of the test or procedures, including the mother's signature in the chart. In addition, the LDM must follow the requirements of ORS Chapter 432, 433.306, OAR 333-021-0800 and 333-024-0205 through 0235 when the mother declines administration of vitamin K or infant metabolic screening.

Stat. Auth.: 676.605, 676.615, 687.480 & 687.485

Stats. Implemented: 676.605, 676.615, 687.480 & 687.485

Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 2-1998, f. 4-14-98, cert. ef. 4-15-98; DEM 1-1999(Temp), f. 9-1-99, cert. ef. 9-9-99 thru 2-29-00; DEM 2-1999, f. 12-17-99, cert. ef. 12-20-99; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-01; DEM 2-2000(Temp), f. 8-22-00, cert. ef. 8-22-00 thru 2-17-01; DEM 3-2000, f. 9-29-00, cert. ef. 10-1-00; DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; Administrative correction 11-7-01; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-025-0030

### Access to and Administration of Legend Drugs and Devices

Pursuant to ORS 687.493, an LDM who satisfactorily completes the prescribed education outlined in OAR 332-015-0070 is authorized access to and administration of specific legend drugs and devices listed in OAR 332-025-0040, 332-025-0050, and 332-025-0060. The following requirements must be adhered to:

(1) Licensees must comply with all local, state and federal laws and regulations regarding the administration, distribution, storage, transportation and disposal of approved legend drugs and devices listed in OAR 332-025-0040 through 332-025-0060.

(2) Approved legend drugs must be inventoried and securely stored by the LDM at all times the product is not in use, including samples or any remaining portion of a drug.

(3) Records regarding approved legend drugs and devices must be maintained for a period of three years. Records must be kept on the business premises and available for inspection upon request by the Oregon Health Licensing Agency Enforcement Officers. Upon request by the board or agency, an LDM must provide a copy of records. Records must include, but are not limited, to the following:

(a) Name of drug, amount received, date of receipt, and drug expiration date;

(b) Name of drug and to whom it was administered; date and amount of drug administered to client;

(c) Name of drug, date and place or means of disposal.

(4) Expired, deteriorated or unused legend drugs must be disposed of in a manner that protects the licensee, client and others who may come into contact with the material during disposal.

Stat. Auth.: ORS 676.605, 676.615, 687.485, 687.493

Stats. Implemented: ORS 676.605, 676.615, 687.485, 687.493

Hist.: DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-025-0040

### Approved Legend Drugs For Maternal Use

Licensees may administer the following legend drugs as approved by the board for maternal use:

(1) Anti-Hemorrhagics for use by intramuscular injection includes:

(a) Synthetic Oxytocin (Pitocin, Syntocin and generic);

(b) Methylergonovine (Methergine);

(c) Ergonovine (Ergotrate); or

(2) Anti-Hemorrhagics by intravenous infusion is limited to Synthetic Oxytocin (Pitocin, Syntocin, and generic).

(3) Anti-Hemorrhagics for oral administration is limited to:

(a) Methylergonovine (Methergine);

(b) Misoprostol (Cytotec).

(4) Anti-Hemorrhagics for rectal administration is limited to Misoprostol (Cytotec).

(5) Resuscitation is limited to medical oxygen and intravenous fluid replacement.

(6) Intravenous fluid replacement includes:

(a) Lactated Ringers Solution;

(b) 0.9% Saline Solution;

(c) D5LR (5% Dextrose in Lactated Ringers); or

(d) D5W (5% Dextrose in water).

(7) Anaphylactic treatment by subcutaneous injection is limited to Epinephrine.

(8) Local anesthetic includes:

(a) Lidocaine HCl (1% and 2%) (Xylocaine and generic);

(b) Topical anesthetic;

(c) Procaine HCl (Novocain and generic); and

(d) Sterile water papules.

(9) Rhesus Sensitivity Prophylaxis is limited to Rho(d) Immune Globulin (RhoGAM, Gamulin Rh, Bay Rho-D and others).

(10) Tissue adhesive (Dermabond or generic).

Stat. Auth.: ORS 676.605, 676.615, 687.485 & 687.493

Stats. Implemented: ORS 676.605, 676.615, 687.485 & 687.493

Hist.: DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-025-0050

### Approved Legend Drugs For Neonatal Use

Licensees may administer the following legend drugs as approved by the board for neonatal use:

(1) Eye Prophylaxis for disease of the newborn is limited to Erythromycin Ophthalmic (0.5%) Ointment (Ilotycin, AK-Mycin and generics).

(2) Prophylaxis for hemorrhagic disease of the newborn for oral use is limited to Mephyton.

(3) Prophylaxis for hemorrhagic disease of the newborn for intramuscular injection includes:

(a) AquaMephyton; and

(b) Konakion.

(4) Resuscitation is limited to medical oxygen.

Stat. Auth.: ORS 676.605, 676.615, 687.485 & 687.493

Stats. Implemented: ORS 676.605, 676.615, 687.485 & 687.493

Hist.: DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-025-0060

### Approved Devices

Licensees may use or provide as appropriate the following devices as approved by the board:

(1) Devices for injection of medications including:

(a) Needles; and

(b) Syringes.

(2) Devices for administration of intravenous fluids including:

(a) Drip sets; and

(b) Catheters.

(3) Devices for maternal and neonatal resuscitation including:

(a) Suction devices;

(b) Oxygen-delivery devices; and

(c) Bag-Valve-Mask-Sets.

(4) Devices for rupturing the amniotic sac.

(5) Devices for repairing the perineal area including:

(a) Sutures;

(b) Instruments for completing a repair; and

(c) Local anesthetic administration devices.

(6) Barrier methods of contraception.

Stat. Auth.: ORS 183, 487.485 & 687.493

Stats. Implemented: ORS 183, 687.485 & 687.493

Hist.: DEM 1-2001(Temp), f. & cert. ef. 10-1-01 thru 3-29-02; DEM 1-2002, f. 2-25-02 cert. ef. 3-1-02; DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-025-0070

### Records of Care Practice Standards

(1) The LDM must maintain complete and accurate records of each mother and baby.

(2) Records mean written documentation, including but not limited to:

(a) Midwifery care provided to mother and baby;

(b) Demographic information;

(c) Medical history;

(d) Diagnostic studies and laboratory findings;

(e) Emergency transport plan defined under OAR 332-025-0020;

(f) Informed consent and risk information documentation under OAR

332-025-0080;

(g) Health Insurance Portability and Accountability Act (HIPAA) releases;

(h) Description of the reasoning for transfer of care defined under OAR 332-025-0021 of the mother and baby;



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- (i) Documentation of all consultations and recommendations from health care providers as defined under OAR 332-015-0000;
  - (j) Documentation of all consultations and recommendations regarding non-absolute risk factors from Oregon licensed health care providers as defined under OAR 332-025-0021;
  - (k) Documentation of any declined procedures under OAR 332-025-0022;
  - (l) Documentation of termination of care under OAR 332-025-0100; and
  - (m) Documentation that the patient disclosure form has been received by the mother under OAR 332-025-0020.
- (3) Records must be maintained for no less than seven years. All records are subject to review by the agency.
- (4) All records must be legibly written or typed, dated and signed.
- (5) All records must include a signature or initial of the LDM.
- Stat. Auth.: ORS 487.485 & 676.615  
Stats. Implemented: ORS 687.425, 687.480, 687.485, 676.606 & 676.607  
Hist.: DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-025-0080

### Informed Consent and Risk Information Practice Standards

- (1) Informed consent means the consent obtained following a thorough and easily understood explanation of the information to the mother or mother's guardian.
- (2) The explanation must be both verbal and written.
- (3) An LDM must document the verbal explanation and the written informed consent process in the client's record. Informed consent information must include the following:
- (a) Definition of procedure or process;
  - (b) Benefits of procedure or process;
  - (c) Risk(s) of procedure or process;
  - (d) Description of adverse outcomes;
  - (e) Risk of adverse outcomes; and
  - (f) Alternative procedures or processes and any risk(s) associated with them.
- (4) An LDM must obtain mother's dated signature acknowledging she has received, reviewed, and understands the information, and has made an informed choice.
- (5) Beginning on June 1, 2011, each LDM must provide risk information as published on the agency's website [www.Oregon.gov/OHLA](http://www.Oregon.gov/OHLA), and obtain informed consent for the following circumstances:
- (a) Out-of-hospital birth;
  - (b) Vaginal birth after cesarean (VBAC);
  - (c) Breech;
  - (d) Multiple gestations; and
  - (e) Pregnancy exceeding 42 weeks gestation.
- Stat. Auth.: ORS 487.485 & 676.615  
Stats. Implemented: ORS 687.425, 687.480, 687.485, 676.606 & 676.607  
Hist.: DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-025-0100

### Practice Standards for Terminating Midwifery Care

- (1) The procedure for terminating midwifery care in a non-emergent situation is as follows:
- (a) Provide written notice no fewer than three business days as post-marked, unless the mother is in labor or during an emergency, at which time the LDM must continue to provide midwifery care until another provider assumes care;
  - (b) Notice must be sent to the last known address of the mother by certified mail, return receipt requested, as well as by regular mail.
  - (c) Document the termination of care in the mother's records.
- (2) To terminate midwifery care in an emergency, the LDM must activate the 911 emergency system and transfer care to a licensee under ORS chapter 682.
- (3) An LDM in the home setting may leave after transferring care to a licensee under ORS Chapter 682.
- (4) If the mother refuses assistance from licensees under ORS chapter 682 the LDM must continually urge the mother to transfer care to a licensee under ORS Chapter 682 and may:
- (a) Continue care to save a life; and
  - (b) Only perform actions within the technical ability of the LDM.
- (5) If the mother loses consciousness, the LDM must activate the 911 emergency system and transfer care to a licensee under ORS Chapter 682.
- Stat. Auth.: ORS 487.485 & 676.615  
Stats. Implemented: ORS 687.425, 687.480, 687.485, 676.606 & 676.607  
Hist.: DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## 332-030-0000

### Investigative Authority

The Oregon Health Licensing Agency may initiate and conduct investigations of matters relating to the practice of direct entry midwifery, pursuant to ORS 676.608, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 687.445.

Stat. Auth.: ORS 676.608 & 687.445  
Stats. Implemented: ORS 676.608 & 687.445  
Hist.: DEM 1-1993(Temp), f. & cert. ef. 12-22-93; DEM 1-1994, f. & cert. ef. 6-15-94; DEM 1-2000(Temp), f. 7-14-00, cert. ef. 7-15-00 thru 12-1-00; DEM 4-2000, f. 9-29-00, cert. ef. 10-1-00; DEM 1-2004, f. 6-29-04, cert. ef. 7-1-04; DEM 6-2010, f. 12-30-10, cert. ef. 1-1-11

## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** Amend rule to delegate authority to the Administrator in connection with contested case procedural matters.

**Adm. Order No.:** OLCC 16-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 845-003-0670

**Subject:** This rule describes the specific authorities that the Commissioners delegate to others, such as the agency Administrator, in connection with contested cases and states that the Commissioners retain all authority not specifically delegated. We needed to amend this rule in order to delegate to the Administrator the specific authority to prepare and issue orders to address procedural matters arising prior to or after a hearing in a contested case, such as orders granting or denying late hearing requests and requests related to discovery, depositions and participation as a party in a contested case.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-003-0670

### Retained Authority of Commissioners

- (1) The Commissioners retain all authority not specifically delegated.
- (2) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying late hearing requests (frequently called requests for relief from default) as provided in OAR 137-003-0528.
- (3) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying requests to participate as a party, limited party or interested agency in a contested case under OAR 137-003-0535 or 137-003-0540 and to make all decisions incidental to the request, including, but not limited to, specifying the areas of participation and procedural limitations of participation, granting or denying late petitions, shortening the time within which responses to the petition shall be filed and/or postponing the hearing until disposition is made of the petition.
- (4) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying a petition for an order to take a deposition of a party pursuant to OAR 137-003-0572. This authority includes, but is not limited to, the ability to designate the terms of the deposition such as the location, manner of recording, time of day and persons permitted to be present during the deposition.
- (5) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying discovery motions pursuant to OAR 137-003-0570 submitted prior to referral of the contested case to the Office of Administrative Hearings and, if applicable, after the assigned administrative law judge issues a proposed order.
- (6) The Commissioners delegate to the Administrator the authority to respond to questions transmitted to the agency as set forth at OAR 137-003-0635. The scope of the issues that may be transmitted to the agency includes the agency's interpretation of its rules and applicable statutes and which rules or statutes apply to a proceeding.
- (7) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon an informal disposition by settlement.
- (8) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order by Default when the default is the result of a party's failure to request a hearing or withdrawal of a hearing request; or when a party, after requesting a hearing, fails to appear at the hearing and the agency file does not constitute the sole record.
- (9) The Commissioners delegate to the ALJ the authority to prepare and issue a Final Order by Default when the default is the result of a party's

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failure to appear at the time scheduled for hearing and the agency file constitutes the sole record.

(10) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon a proposed order where exceptions are not filed timely and the order is not otherwise subject to review by the Commissioners.

(11) The Commissioners delegate to the Administrator the authority to grant or deny requests for extension of time within which to file exceptions or comments to a proposed order, in conformity with the requirements of OAR 845-003-0590(3).

(12) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying a motion to postpone oral argument to the Commissioners on any comments or exceptions to a proposed order.

(13) The Commissioners delegate to the Administrator the authority to summarily deny requests for reconsideration or rehearing and any stay request based on these requests for reconsideration or rehearing when exceptions or a request to reopen the record has been made by the same participant in the same case.

(14) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying a request to stay the enforcement of a Final Order pending judicial review and in cases where judicial review has not been requested.

(15) "Administrator" means the Executive Director of the Oregon Liquor Control Commission or his or her designee.

Stat. Auth.: ORS 183.341(2) & 471.730(5)(6)  
Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 18-2003, f. 11-24-03, cert. ef. 12-1-03; OLCC 2-2005, f. 4-21-05, cert. ef. 5-1-05; OLCC 1-2008, f. 1-16-08, cert. ef. 2-1-08; OLCC 16-2010, f. 12-22-10, cert. ef. 1-1-11

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**Rule Caption:** Amend two rules to eliminate inconsistencies regarding minimum server age at temporary sales licensed events.

**Adm. Order No.:** OLCC 17-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 845-005-0440, 845-009-0010

**Subject:** OAR 845-005-0440 Temporary Sales Licenses; This rule describes the required qualifications for and privileges associated with the Commission's issuance of a Temporary Sales License (TSL). The rule was silent on the minimum required age for servers at these temporary sales licensed events.

To improve consistency and clarity around the requirements for these temporary events, staff proposed the addition of a new section (11) which states that alcohol servers must be at least 21 years of age with limited exceptions for the performance of non-alcohol related duties. These exceptions parallel those currently allowed for minor permittees (age 18 to 20) on an annually licensed premises.

**OAR 845-009-0010 Service Permit Requirements:** This rule describes who is and isn't required to have a service permit. Because the rule language stated that all employees at a temporary sales licensed event must be at least 21 years of age without exception and did not distinguish between an employee and a volunteer, staff proposed deleting the minimum age requirement from this rule and instead including it in the Temporary Sales License rule (as stated above). Staff also proposed a couple of housekeeping amendments. The first deletes subsection (1)(d) since the current requirements for those who deliver wine, cider & malt beverages are now contained in OAR 845-006-0392 & -0396, which were amended as part of the implementation of the new Wine Shipper Permits in 2008. And the second creates a new subsection (2)(c) describing the statutory service permit exception for nonprofit or charitable organization TSLs.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-005-0440

### Temporary Sales Licenses

(1) A person must obtain from the Commission a license or authority to sell alcoholic beverages. ORS 471.405 establishes a prohibition on sale of alcoholic beverages without a license or authority. ORS 471.406 defines

sale of alcoholic beverages. This rule sets the requirements for obtaining a Temporary Sales License.

(2) Definitions. For this rule:

(a) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is \$50 per license day or for any part of a license day.

(b) "Nonprofit trade association" means an organization comprised of individual or business members where the organization represents the interests of the members and is registered with the state of Oregon as a nonprofit association.

(c) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(d) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity.

(e) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food.

(f) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(g) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(3) ORS 471.190 authorizes the Commission to issue a Temporary Sales License. Temporary Sales Licenses are issued in increments of one license day. The Commission will not approve more than seven license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than seven days. The Commission may issue a Temporary Sales License only to applicants that qualify under the Commission's licensing standards and that are:

(a) A nonprofit or charitable organization that is registered with the state, including nonprofit trade associations where at least 51% of the total membership is comprised of persons that hold winery licenses issued under ORS 471.223 or grower sales privilege licenses issued under 471.227; or

(b) A political committee that has a current statement of organization filed under ORS 260.039 or 260.042; or

(c) An agency of the State; or

(d) A local government or an agency or department of a local government; or

(e) Any applicant not described in (3)(a)-(3)(d) of this subsection, including licensees of the Commission.

(4) A Temporary Sales License may authorize the licensee to sell wine, malt beverages and cider at retail for consumption on the licensed premises and for consumption off the licensed premises. All alcohol sold for consumption off the licensed premises must be in a manufacturer-sealed container that does not hold more than two and one-quarter gallons.

(5) A Temporary Sales License may authorize the licensee to sell distilled liquor by the drink at retail for consumption on the licensed premises.

(6) The Commission may authorize sales of manufacturer-sealed containers of wine, malt beverages or cider under a Temporary Sales License for the purpose of a raffle. The Commission shall issue a Temporary Sales License for the purpose of a raffle only to a nonprofit or charitable organization that is registered with the state.

(7) Applicants must apply in writing for a Temporary Sales License, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

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(8) The application for a Temporary Sales License under this rule shall include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

- (A) The event to prevent problems and violations;
- (B) Patronage by minors as set out in subsection (9) of this rule; and
- (C) Alcohol consumption by adults.

An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (7) of this rule to refuse to process any application that is not complete;

(b) Identification of the individuals to be employed by the licensee to manage events on the licensed premises;

(c) Identification of the premises proposed to be licensed;

(d) Menu and proposal showing compliance with the food service standards of OAR 845-006-0465;

(e) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, type of food service to be offered, proposed hours of food service, and proposed hours of operation;

(f) The recommendation in writing of the local governing body where the licensed premises will be located;

(g) License fees as established by ORS 471.311.

(9) A plan for managing patronage by minors under subsection (8)(a) of this rule must meet the following requirements:

(a) If the Temporary Sales License will be on any part of a premises, room, or area with a permanent license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the permanent license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the Temporary Sales License will not be on any part of a premises, room, or area with a permanent license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(10) Minors are prohibited from the licensed premises or portions of the licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there is video lottery games, social games, or nude entertainment or where such activities are visible.

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

(11) Minimum Age of Servers. Alcohol servers at temporary sales licensed locations must be at least 21 years of age to sell or serve alcoholic beverages, with the following exceptions:

(a) In areas of the licensed premises not prohibited to minors, persons who are 18, 19, and 20 years of age may:

(A) Take orders for, serve and sell alcoholic beverages for on-premises consumption if the activity is incidental to the selling or serving of food in that area of the licensed premises, and may sell alcoholic beverages in manufacturer-sealed containers for off-premises consumption; or

(B) Sell tokens/script, including verifying age, to be redeemed for alcoholic beverages or food at the event.

(b) In areas of the licensed premises prohibited to minors, persons who are 18, 19, and 20 years of age may deliver food, restock non-alcohol supplies and perform other non-alcohol related duties, however the person shall not remain in the prohibited area longer than is necessary to perform these duties.

(12) Alcohol servers at locations licensed under subsections (3)(b)–(e) of this rule must hold valid service permits unless specifically exempted under authority of subsection (13) of this rule.

(13) The Commission may waive the service permit requirement for the holder of a Temporary Sales License issued under subsections (3)(b)–(e) of this rule, and the licensee's alcohol server, if:

(a) The license is used only for package sales; or if

(b) The Commission concludes alcohol service by individuals who do not hold a service permit does not pose a significant risk for public safety problems or non-compliance with liquor laws; and

(c) Each alcoholic beverage point-of-sale at the licensed location is staffed, at all times alcoholic beverages are being sold or served, by an individual who has completed a Server Education course successfully within 5 years prior to the date of the event.

(14) At events licensed under subsection (3)(a) of this rule, before allowing alcohol servers to sell or serve alcoholic beverages, the licensee must ensure that all alcohol servers have met one of the following standards:

(a) The alcohol server has a valid service permit or has successfully completed a Server Education course within 5 years prior to the date of the event, or

(b) The alcohol server has attended training provided by the licensee, and has read, signed and dated the Commission-provided brochure, What Every Volunteer Alcohol Server Needs to Know. The licensee-provided training must address the topics included in the brochure, including but not limited to: minors and proper checking of identification, and how to recognize and respond appropriately to visibly intoxicated persons. At any time while on duty, the alcohol server shall make the signed brochure available for immediate inspection by any inspector or investigator employed by the Commission or by any other peace officer.

(15) If there are compliance problems with an operator or an event, the Commission may add other requirements for the education of servers at events licensed under this rule.

(16) The Commission may deny, cancel or restrict a Temporary Sales License for any reason for which the Commission may deny, cancel or restrict a regular license.

(17) The Commission may deny or restrict a Temporary Sales License if the applicant has a serious violation history at events previously licensed with a Temporary Sales License within the past 36 months.

(18) The Commission shall limit the issuance of Temporary Sales Licenses to the same applicant at the same location to no more than 31 license days from January 1 to December 31 of each year, unless the Commission determines that the applicant would be eligible for an annual license based on the applicant's personal qualifications and the total number of license days at the same location does not exceed 60 in that calendar year.

(19) The Commission may refund the Temporary Sales License fee if the application is withdrawn by the applicant or denied by the Commission, if the event does not take place because of circumstances beyond the applicant's control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

(20) When the Commission approves a written plan under subsection (8)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a category III violation.

(21) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.190 & 471.730(1) & (5)

Stats. Implemented: ORS 471.190, 471.360 & 471.482

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 4-2001(Temp), f. & cert. ef. 8-15-01 thru 2-11-02; OLCC 13-2001, f. 12-18-01, cert. ef. 2-12-02; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 24-2007, f. 12-17-07, cert. ef. 1-1-08; OLCC 17-2010, f. 12-22-10, cert. ef. 1-1-11

## 845-009-0010

### Service Permit Requirements

(1) Who Needs a Service Permit. ORS 471.360 requires the following persons to have service permits:

(a) Any person who mixes, sells or serves alcoholic beverages for consumption on licensed premises;

(b) Any person who directly supervises persons who mix, sell or serve alcoholic beverages for consumption on licensed premises;

(c) The individual principals of a licensed corporation or partnership who mix, sell or serve alcoholic beverages for consumption on licensed premises or who directly supervise those who do.

(2) Exceptions. The following are exceptions to the service permit requirement:

(a) An individual named on the license as a licensee does not need a service permit;

(b) ORS 471.360 allows the Commission to waive the service permit requirement if the licensee's primary business is not the sale or service of alcoholic beverages or food. Under this authority, the Commission waives the service permit requirement for Public Passenger Carriers whose primary business is transportation (for example airlines, and most trains), and does not waive the requirement for Public Passenger Carriers whose primary business is touring (for example tour boats in Oregon waters more than 30 days per calendar year, and small excursion-type railroads). The Commission waives the service permit requirement for some temporary licenses (see OAR 845-005-0440(9) (13), Temporary Sales Licenses).



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(c) Per ORS 471.190, employees and volunteers serving alcoholic beverages for a nonprofit or charitable organization with a temporary sales license are not required to have service permits (see OAR 845-005-0440(14), Temporary Sales Licenses).

(3) Authority to Sell and Serve Based on an Application:

(a) ORS 471.375 allows some service permit applicants to begin selling or serving alcoholic beverages after the applicant completes an official service permit application and an authorized person as defined by 471.375 endorses and sends the application to the Commission;

(b) The authority to sell or serve alcoholic beverages based on an application does not apply to any applicant:

(A) Who has had a service permit denied or cancelled within the three years before the current application;

(B) Who has had a service permit denied because they failed to complete the required alcohol server education program. When the applicant completes an alcohol server education course and passes the exam, the applicant may then sell and serve alcoholic beverages;

(C) Whose service permit application meets the criteria in OAR 845-009-0005, Return of Applications;

(D) Whose service permit is currently suspended.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.190 & 471.730(1) & (5)

Stats. Implemented: ORS 471.190, 471.360, 471.365(2) & 471.375

Hist.: OLCC 2-1989, f. 3-1-89, cert. ef. 4-1-89; OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04; OLCC 4-2005, f. 6-7-05, cert. ef. 7-1-05; OLCC 17-2010, f. 12-22-10, cert. ef. 1-1-11

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**Rule Caption:** Amend prohibited conduct rule's drinking on duty section to expand the definition of "on duty."

**Adm. Order No.:** OLCC 18-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 9-1-2010

**Rules Amended:** 845-006-0345

**Subject:** This rule describes a variety of acts which both licensees (including their employees or agents) and service permittees are prohibited from engaging in. Section (1) specifies that no licensee or permittee will drink or be under the influence of intoxicants while "on duty." Due to recent case history, staff recommended the amendment of section (1) regarding drinking on duty. These amendments expand the definition of "on duty" to include working outside of a scheduled work shift. Whether a person is paid or scheduled for work is not determinative of whether a person is considered "on duty." Instead it hinges on their performing acts on behalf of the licensee which involve the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-006-0345

### Prohibited Conduct

The Commission holds licensees accountable for the acts of their agents and employees. (OAR 845-006-0362). No employee or agent of a licensee may violate any provision of this rule. A violation of any section of this rule by an employee or agent of a licensee is considered a violation by the licensee.

(1) Drinking on Duty: No licensee or permittee will drink or be under the influence of intoxicants while on duty.

(a) "On duty" means from the beginning of a work shift that involves the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, to the end of the shift including coffee and meal breaks.

(b) "On duty" also means, for those working outside a scheduled work shift, having the authority to put himself or herself on duty and performing acts on behalf of the licensee which involve the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises. Whether a person is paid or scheduled for work is not determinative of whether the person is considered "on duty" under this subsection.

(c) "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who mix, sell or serve, check identification or control the premises.

(d) Being under the influence of intoxicants on duty is a Category II violation.

(e) Drinking on duty is a Category III violation.

(2) No licensee or permittee will fail to call the police when a Commission regulatory employee directs the licensee or permittee to call. Violation of this section is a Category II violation.

(3) Evidence:

(a) No licensee or permittee will:

(A) Destroy, damage, alter, remove, or conceal potential evidence, or attempt to do so;

(B) Refuse to give a Commission regulatory employee or police officer this evidence when the employee or officer lawfully requests it; or

(C) Ask or encourage another person to do subsections (a) or (b) of this section.

(b) Violation of this section is a Category III violation.

(4) Access to Premises:

(a) No licensee or permittee will deny entrance to the licensed premises during regular business hours to a Commission regulatory employee or police officer who enters or wants to enter to conduct reasonable search to ensure compliance with alcoholic beverage law. Once the regulatory employee or police officer is on the licensed premises, no licensee or permittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws;

(b) Examination of premises that are or appear closed occurs only when there is reason to believe an alcoholic beverage law violation is occurring. No licensee or permittee will refuse or fail to promptly admit a Commission regulatory employee or police officer to the licensed premises when the regulatory employee or officer identifies him/herself and asks to enter to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.

(c) Violation of this section is a Category II violation.

(5) Open Containers: No licensee or permittee will permit a person to take an open container of alcoholic beverages from the licensed premises, except as ORS 471.178, 471.200 and 471.175 allow. Except for tastings as allowed in OAR 845-006-0450, no Off-Premises Sales licensee will permit an open container of alcoholic beverages on the licensed premises unless the licensee also holds another license at the premises that allows on-premises consumption. Violation of this section is a Category V violation.

(6) Liquor on Premises: No licensee or permittee will have or permit any alcoholic liquor on the licensed premises which the licensee does not allow the licensee to sell or serve. Notwithstanding this requirement, a limited on-premises or brewery-public house sales licensee may have distilled spirits on the premises if the distilled spirits are used only for cooking, are kept in a container only in the food preparation area, and the container is clearly marked "for cooking only". Violation of this section is a Category V violation.

(7) Drive-up Window: No licensee or permittee will sell or deliver any alcoholic beverages through a drive-up window. Violation of this section is a Category III violation.

(8) Liquor as a Prize: Except as allowed in ORS 471.408, no licensee or permittee will give or permit any alcoholic beverage as a prize, premium, or consideration for any lottery, contest, game of chance or skill, exhibition, or any competition of any kind on the licensed premises. Violation of this section is a Category V violation.

(9) "Good Faith Effort": ORS 471.315(1)(a)(G), and 471.412(2) prohibit a licensee or permittee from knowingly allowing a visibly intoxicated person to drink alcoholic beverages. A licensee or permittee who makes a good faith effort to remove the alcoholic beverage does not violate these statutes.

(a) As used in ORS 471.412(2) and this rule, "good faith effort" means:

(A) Placing a hand on the drink and trying to remove it; or

(B) Making a verbal request for the drink, if the server has reason to believe that touching the patron's drink could cause a disturbance.

(b) The Commission will issue letters of reprimand for the first three violations of this section within a two-year period. A fourth violation within a two-year period is a Category III violation assessed at the fourth level (cancellation).

(10) Promotions.

(a) The following practices are prohibited:

(A) The sale, offer or service to any person of an unlimited number of alcoholic beverage(s) during any set period of time for a fixed price;

(B) The sale, offer or service of alcoholic beverages by the drink for a price per drink that is less than the licensee's cost for the alcohol to any person paying a fixed "buy in" price, entry fee, cover or door charge;

(C) Price reductions on alcoholic beverages by the drink from 12:00 midnight until 2:30 a.m. A price reduction is a lower price as compared to

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the usual, customary, or established non-discounted price the licensee charges for a drink of that type on the licensed premises;

(D) The sale, offer or service of distilled spirits by the bottle for consumption on the premises, except as allowed in OAR 845-006-0433 (Minibars in Hotel Guest Rooms) and OAR 845-006-0434 (Minibars in Arena Suites). This subsection does not prohibit a Full On-Premises Public Location Sales Licensee (F-PL) or Full On-Premises Catering Sales Licensee (F-Cat) from charging clients by the bottle for distilled spirits that are served by the drink at hotel suites, banquets, receptions or catered events where the reasonably projected attendance is at least 20 patrons;

(E) Operating, encouraging or permitting games of chance or skill, contests, exhibitions, or competitions of any kind on the licensed premises that involve drinking alcoholic beverages, (i.e. beer pong, "21 for 21");

(F) Dispensing, pouring or otherwise serving any alcoholic beverage directly into a person's mouth, including through any device such as a "bong";

(G) Permitting use of an alcohol vaporization device on a premises licensed for the sale of alcoholic liquor. An alcohol vaporization device, also called an alcohol without liquid machine, is a device, machine or process which mixes spirits, alcoholic liquors or any product containing alcoholic liquor with oxygen or any other gas to produce a vaporized product for consumption by humans by inhalation.

(b) Violation of this section is a Category III violation.

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.030, 471.040, 471.175, 471.178, 471.200, 471.315(1)(a)(G), 471.405(1), 471.408, 471.412, 471.675 & 471.730

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 4-2003, f. 3-31-03 cert. ef. 4-1-03; OLCC 5-2007, f. 3-22-07, cert. ef. 4-1-07; OLCC 3-2009, f. 4-21-09, cert. ef. 5-1-09; OLCC 18-2010, f. 12-22-10, cert. ef. 1-1-11

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**Rule Caption:** Adoption of winery rules governing privilege tax reporting, exemptions, and payment.

**Adm. Order No.:** OLCC 19-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 9-1-2010

**Rules Adopted:** 845-008-0050, 845-008-0070, 845-008-0080, 845-008-0090

**Rules Ren. & Amend:** 845-010-0154 to 845-008-0060

**Subject:** In April 2009, the Commission accepted a petition from the Oregon Winegrowers Association (OWA) and initiated action to adopt the rules in this package. These new winery rules govern the reporting and payment of privilege tax in the areas of: tax reporting & liability, small winery exemption, export exemption, penalties & interest, and refunds.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-008-0050

### Tax Reporting and Tax Liability

All wineries must file tax statements with the Commission which include the quantity of wine produced, purchased or received during the calendar year. This rule explains the criteria to qualify as an annual reporter as well as the reporting requirements for both annual and monthly reporters.

(1) Annual Reporting Eligibility and Requirements.

(a) A winery is eligible to file a single annual tax statement for any particular calendar year if the winery either:

(A) Was not liable for any privilege tax in the prior calendar year and does not expect to be liable for any privilege tax in the current calendar year; or

(B) The winery is in its first calendar year of operation and does not expect to be liable for any privilege tax in the current calendar year.

(b) A winery that files annual tax statements must:

(A) Submit the statement and all required tax schedules for a given calendar year by January 20 of the following year;

(B) Submit a tax statement that shows the total amount of wine removed from federal bond during the calendar year preceding the reporting date as well as any exemptions being claimed for wine that was removed from bond;

(C) Submit by the January 20 reporting date any tax owed on wine removed from bond during a calendar year and not subject to exemption; and

(D) Submit an annual tax statement and supporting schedules by the due date even if the winery did not remove any wine from federal bond or the winery is claiming exemptions for all of the wine it removed from bond.

(c) If a winery discovers during the calendar year that it will owe tax, it no longer qualifies for annual filing and must begin monthly filing on the 20th of the following month. The month when monthly filing begins is also the catch-up month when any tax owed year-to-date must be submitted to the Commission.

(d) Failure to file a tax statement and supporting schedules or to pay tax owed by the January 20 due date may result in the assessment of penalties and interest as set forth in OAR 845-008-0080.

(2) Monthly Reporting Requirements.

(a) A winery that does not qualify for annual reporting must file a monthly tax statement. If a winery knows or reasonably should know that it will have a tax liability in the current calendar year, it must report monthly.

(b) A winery that files monthly tax statements must:

(A) Submit the statement and all required tax schedules by the 20th of each month for the preceding calendar month;

(B) Submit a tax statement that shows the total amount of wine removed from federal bond during the calendar month preceding the reporting date as well as any exemptions being claimed for wine that was removed from bond;

(C) Submit any tax owed on wine removed from bond during a calendar month and not subject to exemption by the monthly reporting date; and

(D) Submit a monthly tax statement and supporting schedules by the due date even if the winery did not remove any wine from federal bond or the winery is claiming exemptions for all of the wine it removed from bond.

(c) Failure to file a tax statement and supporting schedules or to pay tax owed by the monthly due date may result in the assessment of penalties and interest as set forth in OAR 845-008-0080.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020

Stats. Implemented: ORS 473.060 & 473.070

Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

## 845-008-0060

### Small Winery Exemption

ORS 473.050(5) provides that no tax shall be levied, collected or imposed upon the first 40,000 gallons of wine sold annually in Oregon from a United States manufacturer of wine producing less than 100,000 gallons annually. This rule explains the criteria to qualify for this small winery exemption.

(1) A winery qualifies to take the small winery exemption if the winery produces less than 100,000 gallons of wine during the calendar year in which the exemption is claimed. A winery's total production for the year is measured by the volume of wine produced by fermentation as reported to the Alcohol and Tobacco Tax and Trade Bureau (TTB) for the calendar year. Wine is considered produced for Oregon tax purposes when fermentation is completed or the wine is removed from the fermentor.

(2) The winery claiming the small winery exemption must hold a federal basic permit to produce wine and must have produced a minimum of 1 gallon of wine in the calendar year that the exemption is taken. A winery that holds a federal basic permit to produce wine but does not produce any wine during a calendar year may not take the small winery exemption on any wine it removed from federal bond during that calendar year.

(3) A winery may exempt no more than 40,000 gallons of wine under this exemption during a calendar year. While eligibility for the small winery exemption is based on the current year's wine production (less than 100,000 gallons), the exemption itself (no more than 40,000 gallons combined total) can be taken on any wine removed from bond during the year regardless of the year it was produced.

(4) A winery may claim the small winery exemption for wine that it removes from federal bond and intends, at the time of removal, to sell in Oregon. The exemption may be taken at the time of removal if the winery intends in good faith to sell the wine in Oregon. Wine qualifies as being sold in Oregon if ownership of the wine is, or is expected to be, transferred to a person or entity located within this state.

(5) The winery claiming the small winery exemption must have removed the exempt wine from federal bond. No exemption is available for wine that was not removed from bond by the winery claiming the exemption, such as wine that the winery received or imported federally tax-paid, or wine that the winery has transferred to another entity in bond.

(6) The Commission will deny the small winery exemption if it determines that allowance of the exemption would benefit a winery who would otherwise fail to qualify for use of the exemption.

(7) Wine that is claimed as exempt under the small winery exemption may not be claimed as exempt from tax under any other provisions of ORS 473.

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(8) A bonded winery or warehouse may claim the small winery exemption on behalf of an eligible small winery for wine that the winery or warehouse receives from the transferring small winery and removes from bond, provided that all of the following requirements are met:

(a) The wine on which the exemption is claimed must have been produced by the small winery that transfers the exemption and must be eligible for exemption if it were to have been removed from bond by the transferring winery. The exemption may not be transferred on wine that the transferring winery received from another producer.

(b) The winery or warehouse taking the exemption on behalf of the transferring winery must remove the wine from bond.

(c) The transferring winery must hold title to the wine for which the exemption is transferred at the time the wine is removed from bond.

(d) The total amount of the exemption that may be claimed by a winery or warehouse on behalf of a small winery in any calendar year may not exceed 40,000 gallons minus all amounts claimed under the small winery exemption by the transferring small winery or by others on its behalf for that year. The transferring winery must provide to the transferee all information necessary for the transferee to determine the amount of exemption it may claim.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020  
Stats. Implemented: ORS 473.050  
Hist.: OLCC 13-2008, f. 12-17-08, cert. ef. 12-20-08; Renumbered from 845-010-0154 by OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

## 845-008-0070

### Export Exemption

ORS 473.050(2) provides that no tax shall be levied, collected or imposed upon any wine exported from the state. This rule explains the criteria to qualify for this export exemption.

(1) The export exemption can be used to recover taxes already paid to the Commission or to offset a current tax liability.

(2) A winery may claim the export exemption for wine that it removes from federal bond and exports from the state. The exemption may be taken at the time of removal if the winery intends in good faith to export the wine. Wine qualifies as being exported if the wine is, or is expected to be, transported to a location outside of Oregon. All export exemptions must be supported by proof of export such as a bill of lading or other shipping documentation.

(3) Wine that is claimed as exempt under the small winery exemption may not be claimed as exempt from tax under the export exemption.

(4) A winery may claim a refund for wine on which tax was paid to the Commission in a prior period if the wine is subsequently exported from the state. No refund will be issued if no tax was paid by the winery to the Commission on the wine being exported. No refund may be claimed on wine that was previously exempted from tax.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020  
Stats. Implemented: ORS 473.050 & 473.060  
Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

## 845-008-0080

### Penalties and Interest

This rule describes the penalties and interest that may be assessed on a winery's outstanding tax liability.

(1) Unless waived, the Commission will assess a penalty of 10% and interest at the rate of 1% per month on any tax that is not paid on the due date as specified in OAR 845-008-0050(1)(d) or (2)(c).

(2) ORS 473.060(2) provides that the Commission may waive any interest or penalty assessed on unpaid taxes if the Commission determines that the winery has made a good faith effort to comply with the privilege tax requirements set forth in ORS Chapter 473, OAR chapter 845 division 8, 845-010-0151, and 845-010-0170.

(3) Failure to file any tax statement and supporting schedules by the due date is a Category IV violation. Failure to file an accurate and complete tax statement and supporting schedules by the due date may result in the assessment of penalties and interest on any outstanding tax liability.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020  
Stats. Implemented: ORS 473.060 & 473.140  
Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

## 845-008-0090

### Refunds

ORS 473.060(1) provides that the Commission may refund any tax payment imposed upon or paid in error by a winery. This rule explains the criteria for the refund process.

(1) A refund is the Commission returning money to the winery for over-paid taxes. It is distinguished from a credit, which is also for over-paid taxes but is used to offset a new tax liability.

(2) Refunds of privilege tax paid in a prior reporting period will be issued upon a written request with proper documentation showing that the tax was paid in error or that an exemption applies to wine on which tax was previously paid to the Commission. A refund will be issued only to the entity that previously paid the tax for which the refund is being claimed.

(3) If the refund request is for an amount over \$1,000 an audit may be required before a refund will be issued.

(4) If at audit it is determined that a refund was issued in error and there is in fact an outstanding tax liability, then penalties and interest may be assessed.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020  
Stats. Implemented: ORS 473.060  
Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

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**Rule Caption:** Adopt rule requiring public input process for increases in the retail price of distilled spirits.

**Adm. Order No.:** OLCC 20-2010

**Filed with Sec. of State:** 12-22-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 9-1-2010

**Rules Adopted:** 845-015-0138

**Subject:** The Distilled Spirits Council of the United States (DISCUS) submitted a petition requesting the adoption of a new rule relating to the retail price of distilled spirits. The petitioner proposed a new rule setting forth a required public input process for increases in the retail price of distilled spirits sold to the public. The new rule requires 45 days notice to the public, including a public hearing for oral testimony and a written comment period, before any change in the pricing formula resulting in a price increase can be made.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845 015 0138

### Retail Price for Distilled Spirits

Before the Commission implements a surcharge or change in the mark-up formula for distilled spirits that would result in an increase in the retail price of distilled spirits sold to the public, the Commission shall:

(1) Provide at least 45 days public notice before such a price increase takes effect;

(2) Provide the opportunity for submission of written comments regarding the proposed price increase;

(3) Conduct a public meeting for the purpose of receiving verbal comment regarding the proposed price increase; and

(4) Consider any written or verbal comments before implementing such a price increase.

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1) & (5)  
Stats. Implemented: ORS 471.745  
Hist.: OLCC 20-2010, f. 12-22-10, cert. ef. 1-1-11

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## Oregon State Lottery Chapter 177

**Rule Caption:** Amends certain rules to streamline retailer application process; housekeeping changes.

**Adm. Order No.:** LOTT 13-2010

**Filed with Sec. of State:** 12-20-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 177-040-0000, 177-040-0001, 177-040-0003, 177-040-0070

**Subject:** The Oregon State Lottery initiated permanent rulemaking to amend the above referenced administrative rules. The amendments streamline the retailer contract application process by amending certain document and personal disclosure requirements and removing the requirement that the Wheelchair Accessibility Affidavit be notarized. Other amendments included housekeeping changes.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-040-0000

### Definitions

For purposes of OAR chapter 177 division 40, the following definitions apply except as otherwise specifically provided in OAR Chapter 177 or unless the context requires otherwise:



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(1) **“Age-controlled area”** means an area where a natural person who is under 21 years of age is prohibited from entering or remaining as posted by either the Lottery or the Oregon Liquor Control Commission.

(2) **“Applicant”** means a person applying for a contract with the Lottery for the purpose of selling Lottery tickets or shares to the public, and any key person.

(3) **“Application”** means the forms, documents, or other information that the Lottery requires an applicant to submit to the Lottery in order to apply for or maintain a retailer contract.

(4) **“Business”** includes:

- (a) A commercial activity engaged in for profit or gain; or
- (b) The activity engaged in by a nonprofit organization; or
- (c) The activity engaged in by a private club as described in ORS 471.175(8).

(5) **“Complete application”** means an application that is completely filled out, and when required, is signed by the applicant, and includes all the documentation and information requested by the Lottery.

(6) **“Premises”** means the building and grounds occupied by a business (including those areas not normally open to the public), where traditional Lottery game tickets and shares, Video Lottery<sup>SM</sup> game shares, or both, are sold. Premises includes an area designated by the Lottery at any single location identified in an application as a proposed site for Oregon Video Lottery<sup>SM</sup> terminals.

(7) **“Key person”** means:

(a) Corporations: For any corporation, including a subsidiary of a parent corporation:

(A) Stockholders: Any stockholder of a corporation who owns 10% or more of the outstanding stock in such corporation.

(B) Directors: Any director of a corporation who owns or controls 3% or more of the voting stock in such corporation.

(C) Officers: Any officer of a corporation.

(b) Private Clubs: For a private club as described in ORS 471.175(8):

(A) The treasurer.

(B) Any officers, directors, or trustees who oversee or direct the operation of the food, beverage, Lottery, or other gambling-related activities of the private club, and

(C) Each manager in charge of the food, beverage, Lottery, or other gambling-related activities of the private club.

The provisions of paragraphs (7)(a)(A), (B), and (C) of this rule do not apply to private clubs.

(c) Trusts: The trustee and all persons entitled to receive income or benefit from the trust.

(d) Associations: The members, officers, and directors.

(e) Partnerships and Joint Ventures: All of the general partners, limited partners, or joint venturers.

(f) Limited Liability Companies: Any manager of the limited liability company, and any members of the limited liability company whose investment commitment or membership interest is 10% or more in the limited liability company.

(g) Layered Ownership: If the parent company, general partner, limited partner, joint venturer, stockholder, member or manager of a limited liability company is itself a corporation, trust, association, subsidiary, partnership, joint venture or limited liability company, then the Director may require that the applicant provide disclosure for such entity as if such entity were a key person itself.

(h) Family Members: Immediate family members as required in ORS 461.300(2)(b)(G) and (H).

(i) Sole Proprietors: The sole proprietor, if the retailer is a sole proprietor.

(j) Managers:

(A) General: A person, regardless of title, who acts or who has real or apparent authority to act on behalf of the owner in most matters concerning the operation of the owner’s business during all business hours, or who routinely performs all of the following duties:

(i) The hiring and firing of employees;

(ii) Making purchasing decisions relating to the buying of supplies and inventory; and

(iii) Conducting banking functions for the business.

(B) Exception: This definition does not include a “shift manager” or a “convenience store manager” unless otherwise qualified under this rule.

(C) Examples: The following are examples of managers who are key persons under this definition:

(i) General Manager: A person who operates the business for a corporate or absentee owner.

(ii) Area Manager: A person who operates multiple locations or supervises multiple store managers.

(k) Landlord: A landlord who receives 40% or more of the retailer’s Lottery commissions as a part of lease payments or rent, or any landlord who the Director finds, based on reasonably reliable information, exerts influence over the operation of the retailer’s business.

(l) Contractual Relationship: Any person who has a lease, contract, or other agreement with the applicant or retailer or anyone else, to provide food service or to manage or operate any part of the business in a Video Lottery<sup>SM</sup> retailer’s premises other than as an employee.

(m) Control Person: Any reference to a “control person” of a retailer in OAR Chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on or after the effective date of this rule shall be deemed to refer to a “key person” as defined in this section.

(8) **“Personal disclosure”** means those documents and information that are part of the application which relate to a natural person’s personal, criminal, and financial background, and associations with other people.

(9) **“Mediation”** has the meaning as defined in ORS 36.110(4).

(10) **“Mediator”** means a person who performs mediation.

(11) **“Multi-State Retail Chain”** means a retailer, including an applicant, who:

(a) Operates five or more retailer locations within the State of Oregon and one or more retail locations outside of the State of Oregon, all of which engage in similar business activities;

(b) Has common ownership and control over each location; and

(c) Sells no Oregon Lottery<sup>®</sup> games except traditional lottery games within the State of Oregon.

(12) **“Public Company”** means a retailer, including an applicant, who is a business entity that offers securities registered for sale by the federal Securities and Exchange Commission to the general public and sells no Oregon Lottery<sup>®</sup> games except traditional lottery games within the State of Oregon.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.300

Hist.: SLC 3-1985(Temp), f. & ef. 1-15-85; SLC 8-1985, f. & ef. 6-21-85; LC 11-1987, f. 6-22-87, ef. 7-1-87; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 3-2006, f. 2-16-06, cert. ef. 3-1-06; LOTT 8-2006, f. 12-20-06, cert. ef. 1-1-07; LOTT 13-2010, f. 12-20-10, cert. ef. 1-1-11

## 177-040-0001

### General Application Requirements

(1) General: Any person may request an application from the Lottery.

(2) Disclosure Required: The Director may require any degree or type of disclosure necessary of the applicant or any other person in order to assure the security and integrity of the Lottery. An applicant must disclose to the Lottery all information required by the Director.

(3) Application Required: An applicant must file a complete application. The applicant must provide a complete personal disclosure, including documents and other information requested by the Lottery relating to the applicant’s personal, financial, and criminal background and an applicant’s associations with other persons. The application shall also include, but not be limited to:

(a) Authorization: An authorization, signed by the applicant, to investigate the applicant.

(b) Consent: Written consent to allow the examination of all accounts and records to be considered by the Director to be material to the application.

(c) Disclosure: Disclosure of the source of funds, financing, and business income used for the purchase and operation of the applicant’s business.

(d) Premises Ownership: If the premises are not wholly owned by the applicant, the applicant shall furnish to the Lottery:

(A) A statement of the name and address of the owner or owners of such premises;

(B) Any document requested by the Lottery showing the applicant is entitled to possession of the premises;

(C) Complete information pertaining to the interest held by any person other than the applicant, including interest held under any mortgage, deed of trust, bond or debenture, pledge of corporate stock, voting trust agreement, or other device; and

(D) Such other information as the Lottery may require.

(4) Waiver of Personal Disclosure: Notwithstanding section (3) of this rule:

(a) Public Company or Multi-State Retail Chain: If the applicant for a traditional lottery game retailer contract is a public company or a multi-state retail chain, Lottery will waive the personal disclosure requirements

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for the manager of each retailer location unless the Director determines such disclosure is necessary for the security and integrity of the Lottery.

(5) Compliance Required: An applicant's failure to comply with any application or disclosure requirement may be grounds for denial or rejection of the application.

(6) Material Change: An applicant must immediately report to the Lottery, in writing, any material changes to the application during the application process. A "material change" means any change that may affect the Lottery's evaluation of the application based on the requirements contained in Division 40 of these rules.

(7) Waiver: In submitting an application, the applicant expressly waives any claim against the State of Oregon, its agents, officers, employees, and representatives, and the Oregon State Lottery, its Director, agents, officers, employees, and representatives for damages that may result. Each applicant also accepts any risk of adverse public notice, embarrassment, criticism, damages, or claims which may result from any disclosure or publication by a third party of any public information on file with the Lottery.

(8) Resubmission: When an applicant has submitted a complete personal disclosure to the Lottery within the preceding twelve months, the applicant need not necessarily submit a new personal disclosure, but if the applicant does not submit a new personal disclosure, the applicant must submit, on forms approved by the Director, a sworn statement regarding any changes which may have occurred regarding the accuracy of the information provided in the previous personal disclosure. The Director may require the applicant to submit a complete personal disclosure if the Director determines substantial changes have occurred.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 12-2008, f. 12-23-08, cert. ef. 1-1-09; LOTT 13-2010, f. 12-20-10, cert. ef. 1-1-11

## 177-040-0003

### Application for Temporary Lottery Retailer Contract

(1) General: For the purposes of this rule, temporary retailer contract means a contract issued to a retailer for a temporary period. A temporary contract may be formed subject to such special terms, conditions, or limitations as the Director may deem prudent.

(2)(a) Submission: To apply for a temporary retailer contract, an applicant must submit a complete application for a retailer contract.

(b) Purchase of Existing Business: When an applicant applies for a temporary contract for a business which the applicant is purchasing from an existing Lottery retailer, the applicant must submit to the Lottery a complete application along with any documentation requested by the Lottery regarding the intended purchase prior to the date the applicant takes possession of the premises pursuant to a purchase agreement. Notwithstanding submission of the application prior to the date of possession, the Lottery shall not enter into a temporary contract with the applicant until on or after the date the applicant takes legal possession of the business.

(3) Investigation: When the Lottery accepts the complete application for a temporary retailer contract, the Director will conduct an abbreviated investigation of the applicant and the business. That investigation includes, but is not limited to:

(a) A computerized background check for criminal arrests and convictions;

(b) A credit check using the services of a commercial credit reporting company; and

(c) An inspection of the business for which the applicant seeks a temporary retailer contract.

(4) Qualifying: An applicant may qualify for a temporary retailer contract if, based on the abbreviated investigation and on the application, all of the following criteria are met:

(a) The applicant is applying for a retailer contract at a specific location;

(b) The "Criteria Precluding Entering Into a Contract" described in OAR 177-040-0005 do not apply to the applicant;

(c) The applicant has no criminal convictions of any kind within five years of the date application is made;

(d) The applicant has no convictions as described in OAR 177-040-0010(3), "Criminal Behavior";

(e) The applicant has no Class "A" misdemeanor or felony charges pending against the applicant;

(f) The applicant has no outstanding judgments, liens, or collections, except those judgments which the applicant is disputing through a legal process;

(g) The applicant is in compliance with all tax laws;

(h) The applicant has certified that the business location complies with OAR 177-040-0070, "Retailer Wheelchair Accessibility Program";

(i) The applicant has the appropriate Oregon Liquor Control Commission license, as required by ORS Chapter 461, if applying for a contract to offer Video Lottery<sup>SM</sup> games; and

(j) There are no apparent factors regarding the applicant to cause the Director to reasonably conclude that the applicant poses an actual or apparent threat to the fairness, honesty, integrity, or security of the Lottery and its games. Factors that may pose a threat include, but are not limited to, any of the following examples:

(A) The applicant or key person has one or more criminal arrests or convictions, depending on the nature and severity of the crimes involved; or

(B) The applicant or key person has been involved in any civil action in which the final judgment indicates that the applicant or key person is not financially responsible, depending on the nature, severity, and recency of the action.

(5) Other Requirements: Prior to the effective date of the temporary retailer contract, the Director may require the applicant to:

(a) Receive training from the Lottery;

(b) Establish an electronic funds transfer (EFT) bank account for Lottery funds;

(c) Pay all necessary fees associated with the installation of telephone lines and telephone service;

(d) Agree to pay all necessary fees associated with amusement device taxes prior to the effective date of a temporary retailer contract; and

(e) Agree to be responsible for and to pay all fees in connection with the application, including any cancellation fees for telephone lines and service.

(6) Other Video Lottery<sup>SM</sup> Requirements: The applicant and the applicant's business must qualify for the type of Lottery sales sought by the applicant. For example, if the applicant seeks a contract to offer Video Lottery<sup>SM</sup> games, the business must have an appropriate liquor license and an age controlled area that meets the Lottery's requirements. In addition, the business must not be operating as a casino as described in OAR 177-040-0061.

(7) Guarantor: If the applicant is an entity other than either a sole proprietor who is a natural person or a private club as defined in ORS 471.175(8), at least one natural person who is a principal of the applicant entity and who is a key person may be required to personally guarantee all monies owed to the Lottery.

(8) Bonding: The Director may require the applicant to post a bond, letter of credit, or cash deposit in the form of certified funds prior to the effective date of a temporary retailer contract.

(9) EFT Transfers: If the Lottery enters into a temporary retailer contract with the applicant, the contract will require the applicant to pay the amount due the Lottery from the sale of Lottery tickets or shares by electronic funds transfer (EFT). In most instances, amounts due the Lottery will be collected via EFT at the end of the fourth day after the close of the Lottery business week. If an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites. The applicant must establish an account for deposit of money from the sale of Lottery tickets and shares with a financial institution that has the capability of making EFT draws.

(10) Burden of Proof: The burden for establishing that an applicant qualifies for a temporary retailer contract is on the applicant.

(11) Termination: In the Director's sole discretion, the Director may immediately terminate a temporary retailer contract if the Director determines that continuing to contract with the applicant is not in the best interest of the Lottery including, but not limited to, when:

(a) The applicant provided false or misleading material information, or the applicant made a material omission in the application for a retailer contract;

(b) The applicant or any key person is arrested or convicted of a Class "A" misdemeanor or felony during the term of the temporary retailer contract;

(c) An EFT payment is rejected for non-sufficient funds (NSF), or the applicant fails to provide timely information to the Lottery regarding any change of the applicant's EFT bank account;

(d) Any other reason contained in the contract or administrative rules that provides a basis for termination of a retailer contract; and

(e) When the Director concludes that continuing to contract with the applicant may pose a threat to the fairness, honesty, integrity, or security of the Lottery and its games.

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(12) Length of Temporary Contract: A temporary retailer contract shall be valid for a specific time period for up to 120 days. A temporary retailer contract may, in the Director's discretion, be extended for up to 120 additional days.

Stat. Auth.: ORS 461.217, 461.250 & 461.300; Or. Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.217, 461.250 & 461.300  
Hist.: LOTT 5-2000, f. 7-26-00, cert. ef. 11-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 2-2008, f. & cert. ef. 6-2-08; LOTT 13-2010, f. 12-20-10, cert. ef. 1-1-11

## 177-040-0070

### Retailer Wheelchair Accessibility Program

(1) Purpose: The purpose of this rule is to require that all new and existing Lottery retailers provide and maintain access to Oregon Lottery® games and related services to persons who use wheelchairs. Access to Video Lottery<sup>SM</sup> games may be achieved by providing access to at least one Video Lottery<sup>SM</sup> game terminal, regardless of slight variations in game theme or play between the different types of Video Lottery<sup>SM</sup> game terminals.

(2) General Requirements: All Lottery retailers shall provide and maintain access to all persons who use wheelchairs to enable their full and equal enjoyment of Lottery games and related services. Retailers shall comply with the Retailer Wheelchair Accessibility Program by installing required accessibility features, by removing identified barriers through structural modifications, or by creating alternative methods of providing access to Lottery games and related services.

(a) Barrier Removal and Accessibility Features: All barriers must be removed that impede wheelchair access to Lottery games and related services. Examples of barrier removal or accessibility features include, but are not limited to:

- (A) Installing ramps;
- (B) Making curb cuts in sidewalks and entrances;
- (C) Creating designated accessible parking spaces;
- (D) Widening doors;
- (E) Rearranging tables, chairs, vending machines, display racks, and other furniture;
- (F) Installing offset hinges to widen doorways;
- (G) Installing accessible door hardware;
- (H) Installing elevators; and
- (I) Relocating Lottery games and related services within the retailer's premises to accommodate persons who use wheelchairs.

(b) Alternative Methods: Alternative methods of providing access to Lottery games and related services must be appropriate or reasonable for the person using a wheelchair, and will apply only when accessibility to the Lottery game or related service does not require physical access by the person using a wheelchair to a specific area of the premises. (For example, playing Keno does not require physical access to a Lottery terminal if the retailer provides table service to persons who use wheelchairs. Conversely, playing Video Lottery<sup>SM</sup> games does require physical access to the Video Lottery<sup>SM</sup> game terminal.) All alternative methods of providing access must be approved by the Director and will only be permitted when the retailer demonstrates to the satisfaction of the Director the necessity of offering alternative methods of access instead of removing barriers or installing accessibility features. The Director's decision is final.

(c) Costs of Modifications: The retailer is responsible for all costs related to removing barriers, installing accessibility features, or offering alternative methods of access for the purpose of making a retailer's premises wheelchair accessible.

(3) Retailer Wheelchair Accessibility Certification: All applicants shall submit with the application, a signed Wheelchair Accessibility Certification form certifying that the retail location is wheelchair accessible. The Certification form shall be provided by the Lottery and shall contain the Lottery's wheelchair accessibility standards. The Wheelchair Accessibility Certification form must be completed and signed by the applicant.

#### (4) Permitted Exemptions:

(a) The Director may grant the following exemptions to the requirements of this rule. The Director shall review the circumstances and supporting documentation provided by a retailer to determine if a retailer's request for an exemption should be granted. The Director shall determine the type and scope of documentation to be required for each exemption classification. All decisions made by the Director are final. A retailer or applicant whose request for an exemption is denied by the Director is required to satisfy the requirements of this rule as a condition for maintaining its eligibility for a Lottery retailer contract.

(A) Historic Properties: To the extent a historic building or facility is exempt under federal law, this rule does not apply to a qualified historic building or facility that is listed in or eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under state or local law. Qualified means exempt from accessibility requirements under the federal historic preservation laws.

(B) Legal Impediment to Barrier Removal: Any law, act, ordinance, state regulation, ruling or decision which prohibits a Lottery retailer from removing a structural impediment or for making a required improvement may be the basis for an exemption to this rule. A Lottery retailer requesting an exemption under this subsection will not be required to seek a zoning variance to establish the legal basis for the impediment, but is required to document and attest to the legal impediment.

(C) Landlord Refusal: An exemption granted to an existing Lottery retailer based on the refusal of a landlord to grant permission to a Lottery retailer to make the structural improvements required by the Lottery under this rule shall only apply to the retailer's current lease term. No new landlord refusals are authorized after August 1, 2000. All existing exemptions granted before August 1, 2000 may be continued until the retailer's contract expires.

(D) Undue Financial Hardship: Undue financial hardship exemptions are not authorized. Any existing exemptions granted before August 1, 2000 may be continued until the retailer's contract expires.

(5) Complaints Relating to Non-Accessibility: The Director will receive and process all accessibility complaints concerning a Lottery retailer as follows:

(a) Initial Complaint and Investigation: When possible, complaints must be in writing and submitted to the Lottery on a Lottery retailer wheelchair accessibility complaint form. The Lottery will investigate the complaint. If the retailer is found to be in compliance with this rule, a letter will be mailed to the retailer and complainant.

(b) Letter of Impending Rule Violation: If the Lottery determines that there are any violations of this rule, the Lottery shall issue a letter of impending rule violation to the retailer. The retailer shall submit a response no later than 30 days after mailing of the letter of impending rule violation. The Director shall determine if the retailer's response is acceptable under this rule. If the retailer is found to be in compliance with this rule, a letter will be mailed to the retailer and the complainant.

(c) Letter of Rule Violation: If the retailer's response to the Lottery's letter of impending rule violation is unacceptable under this rule, or if the retailer does not provide an explanation in the 30 day response period, the Lottery shall issue a letter of rule violation. The letter of rule violation shall describe the violations found at the retailer's location under the terms of this rule.

(d) Corrective Action Plan: The Lottery retailer shall submit a corrective action plan to the Lottery within 30 days of the issuance of the letter of rule violation. The Director may extend the response time for reasons beyond the reasonable control of the retailer. The plan shall describe in detail how the retailer will comply with this rule. The Lottery shall notify the retailer of the Lottery's acceptance or rejection of the plan. If the plan is rejected, the notification shall contain the reasons for rejection of the plan and the corrections needed to make the plan acceptable to the Lottery. If the retailer agrees to make the required corrections, the Lottery shall accept the plan as modified. If a retailer fails to submit a plan within 30 days of issuance of the letter of rule violation and has not requested an extension of time to submit a plan, or if a retailer has requested an extension but the request is denied by the Lottery, the Lottery may terminate the retailer contract.

(e) Time Line for Implementation of Corrective Actions: The retailer must complete corrective actions within 90 days of the date the Lottery accepts the retailer's corrective action plan. If the retailer has not eliminated the violations cited in the letter of rule violation within 90 days of mailing, but has requested an extension of time, the Lottery may grant an extension of no more than 90 days. The Lottery will send a notice of the extension to the retailer and the complainant. Any extension commences immediately upon expiration of the original 90 day period. In no event shall the total amount of time exceed 180 days from the date the Lottery accepts the retailer's corrective action plan.

(f) Notice of Rule Compliance: If the retailer corrects the violations specified in the letter of rule violation, and the retailer has provided an updated Wheelchair Accessibility Certification form certifying full compliance, the Lottery will issue a notice of rule compliance. Until this notice is issued, a complaint is considered pending.



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(g) Termination: Failure of the retailer to make timely corrections in compliance with this rule and the retailer's corrective action plan may result in termination of the retailer contract.

(6) Inspections and Audits: The Director may inspect and audit any Lottery retailer's premises for compliance with this rule at any time including random compliance audits. The Lottery will conduct the audit and inspection during the retailer's regular business hours or at such other time as agreed upon by the retailer and the Lottery. The burden of proof to establish that a retailer's premises are in compliance with this rule is on the Lottery retailer.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4) & ORS 461  
Stats. Implemented: ORS 461.300  
Hist.: LC 5-1997, f. 6-13-97, cert. ef. 7-1-97; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00;  
LOTT 8-2003, f. & cert. ef. 6-30-03; LOTT 13-2010, f. 12-20-10, cert. ef. 1-1-11

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**Rule Caption:** Establish process for requesting study on Video Lottery<sup>SM</sup> retailer compensation rates.

**Adm. Order No.:** LOTT 14-2010

**Filed with Sec. of State:** 12-20-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 12-1-2010

**Rules Adopted:** 177-040-0024

**Subject:** The Oregon State Lottery adopted the above referenced administrative rule to establish a process for requesting a study on Video Lottery<sup>SM</sup> retailer compensation rates for the Oregon Lottery Commission. This study is to be done in conjunction with a review of the Video Lottery<sup>SM</sup> retailer compensation rates set forth in OAR 177-040-0028 on or after October 2014 and prior to the expiration of the current Retailer Contract on June 28, 2015.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-040-0024

### Compensation Rate Study for Video Lottery<sup>SM</sup> Retailers

(1) Purpose: The purpose of this rule is to direct the Director of the Oregon State Lottery to conduct a comprehensive Video Lottery<sup>SM</sup> retailer compensation study to assist the Lottery Commission in determining what retailer compensation system will best fulfill its legal obligation to determine the compensation to be paid to Video Lottery<sup>SM</sup> retailers for their sales of Lottery tickets or shares by undertaking to develop a compensation system that maximizes the net revenue to the state for the public purpose consistent with providing a reasonable rate of return for Video Lottery<sup>SM</sup> retailers, for the Lottery Retailer Contract which term begins June 28, 2015.

(2) Selection of Independent Consulting Company or Consultant: The Video Lottery<sup>SM</sup> retailer compensation study shall be completed by an independent economic consulting company or economic consultant chosen by the Director. The Director may select a consulting company or consultant using any procurement process deemed appropriate by the Director, but in selecting the consulting company or consultant, the Director shall determine that the company or consultant has the requisite experience, expertise, and knowledge for this type of study. The Director shall submit a report to the Lottery Commission before entering into any contract for services with the consulting company or consultant selected by the Director.

(3) Analysis of Video Lottery<sup>SM</sup> Retailer Compensation Systems: The study shall provide an analysis and comparison of various Video Lottery<sup>SM</sup> retailer compensation systems, and shall set forth the pros and cons for each system and the estimated costs to Lottery if it were to use each system. The analysis shall include, but is not limited to, the following Video Lottery<sup>SM</sup> retailer compensation systems:

(a) Tiered compensation rate system where retailer compensation is calculated as a percentage of net receipts, but the percentage declines as net receipts increase over a business year. The higher the net receipts, the lower the percentage paid. This analysis shall include, but is not limited to, the current compensation system described in OAR 177-040-0026.

(b) Single compensation rate system where the retailer compensation is calculated by applying a single, specified percentage to a retailer's net receipts over a business year. This analysis shall include a method or methods for determining the single percentage rate.

(c) Individualized compensation rate system where compensation is calculated based on a percentage of net receipts as determined individually for each Video Lottery<sup>SM</sup> retailer. This analysis shall include the method or methods the Lottery would use to determine the percentage rate or rates for each individual retailer.

(4) Lottery Commission Responsibilities To Be Addressed: In analyzing the various compensation rate systems, as required in section (3) of this rule, the study must consider and address the following constitutional and

statutory responsibilities of the Lottery Commission and the Lottery Director to:

(a) Insure the integrity, security, honesty, and fairness of the Lottery (Article XV, section 4, 4(a), and ORS 461.150);

(b) Undertake to develop a system to maximize net revenue while providing a reasonable rate of return for contractors (ORS 461.445);

(c) Select as Lottery game retailers such persons to best serve the public convenience and promote the sale of Lottery tickets or shares (ORS 461.300);

(d) Provide adequate and convenient availability of Video Lottery<sup>SM</sup> games in both rural and metropolitan locations to promote sales (ORS 461.300);

(e) Determine retailer compensation (ORS 461.310); and

(f) Make ongoing study and comparison of the operations of lotteries in other states and countries (ORS 461.180).

(5) Other Factors: Notwithstanding subsection (4) of this rule, the Director shall determine what other factors are necessary for consideration and review in order to complete a comprehensive Video Lottery<sup>SM</sup> retailer compensation rate study.

(6) Completion: This study is to be completed no later than October 1, 2014.

Stat. Auth.: ORS 461  
Stats. Implemented: ORS 461.300, 461.310, 461.445  
Hist.: LOTT 14-2010, f. 12-30-10, cert. ef. 1-1-11

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## Oregon State Marine Board Chapter 250

**Rule Caption:** Removal of references to Gold Rey and Savage dams on the Rogue River.

**Adm. Order No.:** OSMB 1-2011(Temp)

**Filed with Sec. of State:** 1-3-2011

**Certified to be Effective:** 1-3-11 thru 6-30-11

**Notice Publication Date:**

**Rules Amended:** 250-020-0151, 250-021-0040

**Subject:** This rule action will temporarily remove the language to reflect the removal of Gold Rey and Savage Rapid dams on the Rogue River.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-020-0151

### Boat Operations in Jackson County

(1) No person shall operate a motorboat, except those propelled by electric motors on Agate Reservoir.

(2) No person shall operate a motorboat in excess of 10 MPH on:

(a) Applegate Reservoir;

(b) Fish Lake;

(c) Hyatt Lake;

(d) Willow Lake — Southern portion as denoted by the Uniform Waterway Marker buoys.

(3) The following areas are "designated moorage areas":

(a) Willow Lake — Southwest Cove;

(b) Howard Prairie Lake — Howard Prairie Resort Marina and Klum Landing;

(c) Emigrant Lake — Spillway Cove area at the northwest corner of the lake.

(4) No person shall operate a motorboat in excess of "Slow-No Wake" speed in the moorage areas designated in section (3) of this rule. (For the purposes of this rule "Slow-No Wake" speed means the speed of the boat shall not exceed 5 MPH.)

(5) No person shall moor a boat outside the designated moorage areas set forth in section (3) of this rule for more than 48 hours without obtaining a permit from the Jackson County Parks Department.

(6) Lost Creek Lake:

(a) No person shall operate a motorboat between the breakwaters designating the Steward State Park swimming area;

(b) No person shall operate a motorboat in excess of a 5 MPH, "Slow-No Wake" speed:

(A) In the Lost Creek Arm upstream of the "narrows" as marked;

(B) Within the cove area of the Takelma Park Boat Ramp from the intake tower to shore as marked;

(C) Upstream of the Peyton Bridge.

(7) Emigrant Lake:

(a) No person shall operate a boat in excess of a "Slow-No Wake," Maximum 5 MPH speed in the Hill Creek Arm upstream of a line begin-

# ADMINISTRATIVE RULES

ning at a point on the west shore of the Arm that is approximately 1000' southeast from the area of the point known as the Quarry and extending northeast across the arm to the nearest point of land on the east shore of the arm, as marked;

(b) No person shall operate a boat in excess of a "Slow-No Wake," Maximum 5 MPH speed in the Emigrant Creek Arm upstream of a line extending north and south across the arm that approximately coincides with the meridian of longitude equal to 122¼ 37' 34" North, as marked.

Stat Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 30, f. 6-17-66; MB 39, f. 4-5-68; MB 84(Temp), f. & ef. 5-20-77; MB 86, f. & ef. 7-20-77; MB 87, f. & ef. 9-16-77; MB 5-1978, f. & ef. 6-15-78; Renumbered from 250-020-0175; MB 1-1980, f. 4-1-80, ef. 5-1-80; MB 2-1981, f. & ef. 3-3-81; MB 6-1984, f. 2-14-84, ef. 2-15-84; MB 2-1990, f. & cert. ef. 2-22-90; OSMB 5-1999, f. & cert. ef. 7-1-99; OSMB 7-2002, f. & cert. ef. 10-15-02; OSMB 11-2010(Temp), f. 5-28-10, cert. ef. 6-15-10 thru 10-15-10; Administrative correction 10-26-10; OSMB 1-2011(Temp), f. & cert. ef. 1-3-11 thru 6-30-11

## 250-021-0040

### Special Local Restrictions — Applicability

The following rules for personal watercraft are in addition to the local operating rules found in OAR chapter 250, division 20:

(1) No person shall operate a personal watercraft on the following rivers, or sections of rivers, that flow to the Pacific Ocean, with the exception of the Columbia River which is open. This restriction does not apply to reservoir impoundments on these rivers, unless otherwise noted:

(a) Chetco, above the head of tide;

(b) Rogue, closed between mouth of Snout Creek and the Applegate River. Closed above what was formally the location of Gold Rey Dam. All other areas open;

(c) Pistol, Sixes, Elk Rivers (use OAR 250-020-0082);

(d) Coos, above its confluence with the Millicoma River;

(e) Coquille, above the Highway 42S bridge in the City of Coquille;

(f) East and West Fork Millicoma (use OAR 250-020-0064);

(g) Umpqua, above Scottsburg Park, with exception of impoundments;

(h) Siuslaw, above Highway 126 bridge at Mapleton;

(i) Alsea, Salmon, Siletz Rivers (use OAR 2500-20-0231);

(j) Kilchis, Miami, Wilson, Tillamook, Trask (use OAR 250-020-0308);

(k) Nehalem (use OAR 250-020-0300);

(l) Necanicum (use OAR 250-020-0043);

(m) Yaquina River upstream of the Toledo Airport boat ramp at RM 9.5.

(2) No person shall operate a personal watercraft on the Willamette River above the Beltline Road overpass at RM 178. This does not apply to reservoir impoundments.

(3) No person shall operate a personal watercraft on the McKenzie River system. This does not apply to reservoir impoundments.

(4) No person shall operate a personal watercraft on any tributary stream or river entering the Willamette River.

**EXCEPTION:** Personal watercraft can use the Clackamas River downstream from Clackamette Lake (RM 0.7) to the Willamette. Clackamette Lake is open to personal watercraft.

(5) No person shall operate a personal watercraft on the Deschutes River above Heritage Landing boat ramp (RM 0.5).

(6) No person shall operate a personal watercraft on the John Day River (Sherman/Gilliam County) above Tumwater Falls (RM 10).

(7) No person shall operate a personal watercraft on the Snake River from the Washington border south to Hells Canyon Dam. Oxbow and Brown-lee Reservoirs are open. The Snake River above Brownlee Reservoir is open to personal watercraft.

(8) All other rivers of this state are closed to personal watercraft.

(9) Lakes and reservoirs are open to personal watercraft subject to local operating rules found in OAR chapter 250, division 20.

Stat. Auth.: ORS 830.110, 830.175 & 830.195

Stats. Implemented: ORS 830.110, 830.175 & 830.195

Hist.: MB 3-1990, f. 5-18-90, cert. ef. 6-1-90; MB 9-1990, f. & cert. ef. 11-16-90; MB 6-1992, f. & cert. ef. 4-30-92; OSMB 1-2011(Temp), f. & cert. ef. 1-3-11 thru 6-30-11

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**Rule Caption:** Removal of specific model names to identify the breath testing devices utilized.

**Adm. Order No.:** OSMB 2-2011

**Filed with Sec. of State:** 1-14-2011

**Certified to be Effective:** 2-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 250-010-0430, 250-010-0450

**Subject:** Amend rules to remove specific model names to identify the breath testing devices utilized.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-010-0430

### Chemical Analyses

(1) In accordance with ORS 830.535 the chemical analyses of a person's blood shall be performed according to approved methods as contained in OAR chapter 333, division 13 of the Health Division, Department of Human Resources.

(2) The chemical analysis of a person's breath shall be performed by an individual possessing a valid permit to perform such analyses issued by the Department of State Police under ORS 813.160 as contained in OAR chapter 257, division 30 or as approved by the Board in OAR 250-010-0440.

(3) The chemical analysis of a person's breath for alcohol can be performed using breath testing equipment as approved under OAR 257-030-0040

Stat. Auth.: ORS 830.110 & 830.505 - 830.550

Stats. Implemented: ORS 830.535

Hist.: MB 2-1992, f. & cert. ef. 3-13-92; OSMB 3-2001, f. & cert. ef. 3-29-01; OSMB 2-2011, f. 1-14-11, cert. ef. 2-1-11

## 250-010-0450

### Training for Operators of Breath Test Equipment

(1) Upon request of the administrative head of a city, port or county law enforcement unit, as defined in ORS 181.610, the Oregon State Police, or the Board will provide training in the operation of approved breath test equipment for individuals qualified under OAR 250-010-0440.

(2) The Oregon State Police or the Board will provide a course of instruction covering the chemical analysis of a person's breath to determine the alcohol content thereof, which instruction shall include, but not be limited to:

(a) Approved methods and techniques of chemical analyses;

(b) Use of approved equipment;

(c) Interpretation of test results.

(3) Upon completion of the course of instruction, a written examination will be given and a passing grade of 80 percent or above will be required.

(4) Upon receipt of a passing grade, a permit shall be issued by the Oregon State Police or the Board to the officer stating the methods and equipment the officer is qualified to use.

Stat. Auth.: ORS 830.110 & 830.505 - 830.550

Stats. Implemented: ORS 830.535

Hist.: MB 2-1992, f. & cert. ef. 3-13-92; MB 4-1995, f. & cert. ef. 7-14-95; OSMB 3-2001, f. & cert. ef. 3-29-01; OSMB 2-2011, f. 1-14-11, cert. ef. 2-1-11

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**Rule Caption:** Changes to the Aquatic Invasive Species program.

**Adm. Order No.:** OSMB 3-2011

**Filed with Sec. of State:** 1-14-2011

**Certified to be Effective:** 2-1-11

**Notice Publication Date:** 12-1-2010

**Rules Amended:** 250-010-0650

**Subject:** Changes to the Aquatic Invasive Species program rule includes the sale of an annual or biennial tyvek tag and sticker as replacement to the paper permit issued. In addition, the agency will allow federally owned vessels exempt from the permit requirements. Boats registered in Washington or Idaho are exempt from the non-resident AIS permit. Housekeeping and technical corrections to the regulation.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-010-0650

### Aquatic Invasive Species Prevention Permit

(1) Definitions:

(a) "Manually powered boat" means any watercraft as defined in ORS 830.005(2), but not a motorboat as defined in 830.005(6).

(b) "Aquatic Invasive Species Prevention Permit" is an authorization issued by the Oregon State Marine Board (Board) or through designated agents that certifies payment to the Aquatic Invasive Species Prevention Fund.

(c) "Board" means the Oregon State Marine Board.

(d) "Valid temporary permit" means a temporary aquatic invasive species prevention permit generated from a person purchasing a permit from a designated Internet agent.

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(e) "Eleemosynary" means an organization supported by gifts or charity which is operated primarily as a part of organized activities for the purpose of teaching youth's scout craft, camping, seamanship, self-reliance, patriotism, courage and kindred virtues.

(2) Permit Rules:

(a) A person may not operate a manually powered boat that is 10 feet or more in length, or a motorboat of any length, or a sailboat 12 feet or more in length, on the waters of this state without first obtaining an aquatic invasive species prevention permit from the Board or designated agent.

(b) The aquatic invasive species prevention permit for manually powered boats may be issued as either an annual or biennial permit to be carried or otherwise displayed on the boat. The biennial permit is valid for two calendar years and will cost double the annual permit as described in ORS 830.570 and 830.575.

(c) The owner of a boat for which fees for a certificate of number or registration under ORS 830.790(1)(a)(b)(c) are required will pay an aquatic invasive species prevention permit surcharge of \$5 per biennium at the time of boat registration.

(A) The registration validation stickers are in lieu of an Aquatic Invasive Species Prevention Permit as described in (1)(c).

(B) The validation stickers are non-transferable.

(d) Persons age 14 and older operating manually powered boats that are 10 feet or more in length shall have a valid aquatic invasive species prevention permit or valid temporary permit on board when the boat is in use on the waters of this state.

(e) Out-of-state motorboats and out-of-state sailboats 12 feet in length or more shall carry a non-resident aquatic invasive species prevention permit on board when in use on waters of the state.

(A) Motor boats and sailboats 12 feet in length or more, registered in Washington or Idaho, that launch directly into waters that form a common interstate boundary, or launch in Oregon tributaries within one mile of these waters, that have a current boat registration, Coast Guard documentation, or an aquatic invasive species prevention permit issued by the States of Idaho or Washington, are exempt from the non-resident Oregon aquatic invasive species prevention permit.

(B) Manually powered boats from Idaho that are 10 feet or longer and affixed with an Idaho Aquatic Invasive Species Prevention sticker, and all manually powered boats from Washington, are exempt from Oregon aquatic invasive species permit carriage requirements when launching into waters that form a common interstate boundary, or when launching into Oregon tributaries within one mile of these waters.

(f) Non-motorized and out-of-state resident permits are transferrable. The name on the permit does not need to match the name of the person operating the boat. Persons may purchase multiple permits for use by family and friends.

(g) Operators of manually powered boat liveries, and guides using manually powered watercraft for group-guided activities, may qualify to purchase aquatic invasive species prevention permits at a discounted rate described in ORS 830.575. To qualify for the discounted rate:

(A) These operators shall register with the Board by documenting current business status as a livery.

(B) All boats rented by the livery must be clearly labeled with the livery name.

(h) Clubs or organizations that possess or own boats for communal use by members, participants, racing teams, or for public educational purposes except as exempted under this rule, may purchase aquatic invasive species prevention permits under the name of the organization or the club's presiding officer or secretary.

(A) For racing shells, dragon boats or resident boats exempt from registration under OAR 250-010-0150(2), aquatic invasive species prevention permits numbering not less than the maximum number of boats in use on the water at any given time during a planned event may be held by the event organizer, coach or other designated person at the event site as long as the permits are readily available for inspection by a peace officer.

(B) A \$5 annual or \$10 biennial aquatic invasive species permit may be held as described in (2)(h)(A) for events involving motorized race boats which are owned by Oregon residents but that are otherwise exempt from registration under OAR 250-010-0150(2).

(i) The Board or designated agent may issue a temporary aquatic invasive species prevention permit to an individual who pays for the permit using a Board designated Internet agent.

(A) The temporary aquatic invasive species prevention permit will be valid for 14 days from the date of issue listed on the temporary permit.

(B) Each temporary permit shall contain a unique number that corresponds to the electronic record for the individual named on the permit and to the annual permit.

(j) A person is considered in violation of the provisions contained in this rule and subject to the penalties prescribed by law when they:

(A) Alter an aquatic invasive species prevention permit; or

(B) Produce or possess an unauthorized replica of an aquatic invasive species prevention permit; or

(C) Exhibit an altered aquatic invasive species prevention permit to a peace officer.

(k) The aquatic invasive species prevention permit expires on December 31 of the year indicated on the permit.

(l) The following vessels or classifications are exempt from the requirement to carry an aquatic invasive species prevention permit:

(A) State-owned boats

(B) County-owned boats

(C) Municipality-owned boats

(D) Eleemosynary-owned boats which a supervising adult can confirm through documentation are engaged in an organization-related activity.

(E) A ship's lifeboat used solely for lifesaving purposes

(F) Seaplanes

(G) Federal government-owned boats

(H) Surfboards, sailboards and kite boards.

(m) Violation of the provisions contained in this rule is punishable as a Class D Violation.

Stat. Auth.: ORS 830 & HB 2220

Stats. Implemented: ORS 830.110

Hist.: OSMB 4-2009, f. 10-30-09, cert. ef. 1-1-10; OSMB 1-2010(Temp), f. & cert. ef. 1-5-10 thru 6-30-10; OSMB 6-2010(Temp), f. & cert. ef. 1-15-10 thru 6-30-10; OSMB 7-2010, f. & cert. ef. 5-6-10; OSMB 3-2011, f. 1-14-11, cert. ef. 2-1-11

Public Utility Commission  
Chapter 860

**Rule Caption:** In the Matter of Revisions to OAR 860-027-0050, 860-034-0393, and 860-034-0730 – Uniform System of Accounts.

**Adm. Order No.:** PUC 8-2010

**Filed with Sec. of State:** 12-20-2010

**Certified to be Effective:** 12-20-10

**Notice Publication Date:** 10-1-2010

**Rules Amended:** 860-027-0050, 860-034-0393, 860-034-0730

**Subject:** These rule changes address the federal accounting requirements found in 47 CFR Part 32 to record federal and Oregon Universal Service fund collections and contributions as receivables on the balance sheet rather than as revenues with offsetting expenses on the income statement.

**Rules Coordinator:** Diane Davis—(503) 378-4372

**860-027-0050**

**Uniform System of Accounts for Large Telecommunications Utilities**

(1) The Uniform System of Accounts for Telecommunications Companies, Part 32, adopted by the Federal Communications Commission (FCC) on February 6, 2002, is hereby adopted and prescribed for all large telecommunications utilities except as modified for intrastate purposes in sections (2) through (5) of this rule.

(2) A large telecommunications utility may follow Class B accounting except when Class A accounting is needed to complete intrastate depreciation and jurisdictional separation studies, to provide the details requested in annual reports under OAR 860-027-0070, and to comply with other Oregon rules and statutes.

(3) The allocation rules in Part 32, Section 32.27, are replaced by OAR 860-027-0052(3).

(4) For construction work in progress and property held for future use, each large telecommunications utility shall maintain subsidiary records consistent with ORS 759.285.

(5) Each large telecommunications utility shall maintain subsidiary records sufficient to separately identify the following deferred taxes, universal service fund collection, revenues, and expenses:

(a) Federal and state net noncurrent deferred operating income taxes (Account 4340).

(b) Federal and state universal service fund collection (Account 1170).

(c) Interstate and intrastate switched access revenue (Account 5082).

(d) Interstate and intrastate special access revenue (Account 5083).

(e) Miscellaneous Revenues (Account 5200):



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(A) Directory revenues, including amounts derived from alphabetical and classified sections of directories and fees paid by other entities for the right to publish the large telecommunications utility's directories; the classified section of the directories; the sale of new telephone directories whether they are the large telecommunications utility's own directories or directories purchased from others; additional and boldface listings, marginal displays, inserts, and other advertisements in the alphabetical sections of the telephone directories; and unlisted and nonpublished telephone numbers;

(B) Interstate and intrastate carrier billing and collection revenues derived from the provision to other telecommunications providers for services such as message recording, billing, collection, billing analysis, and billing information services, whether rendered under tariff or contractual arrangements; and

(C) Miscellaneous revenue other than directory or carrier billing and collection revenues.

(f) Distributions from the federal USF and the Oregon USF.

(g) Depreciation expenses related to telecommunications plant in service, depreciation expense related to property held for future use, and amortization expense.

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

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.105, 759.120, 759.125 & 759.130

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 8-1981, f. & ef. 9-8-81 (Order No. 81-626); PUC 5-1985, f. & ef. 4-24-85 (Order No. 85-355); PUC 13-1987, f. & ef. 11-16-87 (Order No. 87-1176); PUC 17-1989, f. & cert. ef. 12-14-89 (Order No. 89-1508/89-1672); PUC 6-1998, f. & cert. ef. 3-13-98; PUC 3-2000, f. & cert. ef. 2-9-00; PUC 9-2000, f. & cert. ef. 5-26-00; PUC 16-2000, f. & cert. ef. 9-12-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 14-2002, f. & cert. ef. 3-26-02; PUC 8-2010, f. & cert. ef. 12-20-10

## 860-034-0393

### Uniform System of Accounts for Small Telecommunications Utilities

(1) The Uniform System of Accounts for Telecommunications Companies, Part 32, adopted by the Federal Communications Commission (FCC) on February 6, 2002, is hereby adopted and prescribed for all small telecommunications utilities except as modified for intrastate purposes in sections (2) through (5) of this rule.

(2) A small telecommunications utility may follow Class B accounting except when Class A accounting is needed to complete intrastate depreciation and jurisdictional separation studies, to provide the details requested in annual reports under OAR 860-034-0395, and to comply with other Oregon rules and statutes.

(3) The allocation rules in Part 32, Section 32.27, are replaced by OAR 860-034-0394(3).

(4) For construction work in progress and property held for future use, each small telecommunications utility shall maintain subsidiary records consistent with ORS 759.285.

(5) Each small telecommunications utility shall maintain subsidiary records sufficient to identify the following deferred taxes, universal service fund collection, revenues, and expenses:

(a) Federal and state net noncurrent deferred operating income taxes (Account 4340).

(b) Federal and state universal service fund collection (Account 1170).

(c) Interstate and intrastate switched access revenue (Account 5082).

(d) Interstate and intrastate special access revenue (Account 5083).

(e) [Reserved].

(f) Distributions from the federal USF and the Oregon USF.

(g) Depreciation expenses related to telecommunications plant in service, depreciation expense related to property held for future use, and amortization expense.

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

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040 & 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 6-1998, f. & cert. ef. 3-13-98; PUC 3-1999, f. & cert. ef. 8-10-99, Renumbered from 860-034-0510; PUC 3-2000, f. & cert. ef. 2-9-00; PUC 9-2000, f. & cert. ef. 5-26-00; PUC 16-2000, f. & cert. ef. 9-12-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 14-2002, f. & cert. ef. 3-26-02; PUC 8-2010, f. & cert. ef. 12-20-10

## 860-034-0730

### Uniform System of Accounts for Type 2 Cooperatives

(1) The Uniform System of Accounts for Telecommunications Companies, Part 32, adopted by the Federal Communications Commission (FCC) on February 6, 2002, is hereby adopted and prescribed for all Type 2 cooperatives utilities except as modified for intrastate purposes in sections (2) through (11) of this rule.

(2) A Type 2 cooperative may follow Class B accounting except when Class A accounting is needed to complete intrastate depreciation and juris-

ditional separation studies, to provide the details requested in annual reports under OAR 860-034-0750, and to comply with other Oregon rules and statutes.

(3) The allocation rules in Part 32, Section 32.27, are replaced by OAR 860-034-0740(3).

(4) For construction work in progress and property held for future use, each Type 2 cooperative shall maintain subsidiary records consistent with ORS 759.285.

(5) Each Type 2 telecommunications cooperative shall maintain subsidiary records sufficient to identify the following universal service fund collection, revenues, and expenses:

(a) [Reserved].

(b) Federal and state universal service fund collection (Account 1170).

(c) Interstate and intrastate switched access revenue (Account 5082).

(d) Interstate and intrastate special access revenue (Account 5083).

(e) [Reserved].

(f) Distributions from the federal USF and the Oregon USF.

(g) Depreciation expenses related to telecommunications plant in service, depreciation expense related to property held for future use, and amortization expense.

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

Stat. Auth.: ORS 183, 756 & 759

Stats. Implemented: ORS 756.040, 759.220 & 759.225

Hist.: PUC 3-1999, f. & cert. ef. 8-10-99; PUC 3-2000, f. & cert. ef. 2-9-00; PUC 9-2000, f. & cert. ef. 5-26-00; PUC 16-2000, f. & cert. ef. 9-12-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 14-2002, f. & cert. ef. 3-26-02; PUC 8-2010, f. & cert. ef. 12-20-10

## Teacher Standards and Practices Commission Chapter 584

**Rule Caption:** Adopts and amends Division 70 rules, clarifies civil rights test requirement and program completion, updates statutes and repeals obsolete rules.

**Adm. Order No.:** TSPC 10-2010

**Filed with Sec. of State:** 12-30-2010

**Certified to be Effective:** 1-1-11

**Notice Publication Date:** 9-1-2010

**Rules Adopted:** 584-070-0205, 584-070-0401, 584-070-0411, 584-070-0421, 584-070-0431

**Rules Amended:** 584-010-0090, 584-017-0200, 584-017-0201, 584-017-0300, 584-017-0390, 584-017-0480, 584-060-0210, 584-060-0220, 584-070-0211, 584-070-0221, 584-070-0271

**Rules Repealed:** 584-042-0002, 584-042-0006, 584-042-0009

**Rules Ren. & Amend:** 584-048-0065 to 584-044-0048

**Subject: ADOPT:** 584-070-0205: *Scope of School Psychology* – Outlines the authorized duties for Initial, Continuing, and Transitional School Psychologist License holders.

584-070-0401: *Scope of School Social Worker License* – Outlines the authorized duties for Initial, Continuing, and Transitional School Social Worker License holders.

584-070-0411: *Initial School Social Worker License* – Adopts requirements for Initial School Worker License.

584-070-0421: *Continuing School Social Worker License* – Adopts requirements for Continuing School Worker License.

584-070-0431: *Transitional School Social Worker License for First Time Out-of-State Applicants* – Adopts requirements for Transitional School Social Worker for first time out-of-state applicants.

**AMEND:** 584-010-0090: *Program Completion Fast Track* – Field Operation Audit – Amends program documentation requirements regarding Basic Skills test, civil rights and professional ethics test and evidence of fingerprint clearance. Amends list of statutes implemented.

584-017-0200: *Verification of Program Completion* – Amends requirements for verification of candidate's program completion. Unit agrees not to recommend candidate for licensure unless all requirements for Initial I are met. Amends list of statutes implemented.

584-017-0201: *Substitute License When Program is Not Complete* – Amends requirements to include passage of civil rights and pro-

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professional ethics test for licensure. Amends list of statutes implemented.

584-017-0300: *Verification of Program Completion (Administrators)* – Amends requirements for verification of administrator program completion. Requires passage of civil rights and professional ethics test and submission of fingerprints. Updates minimum graduate credit hours required beyond a Master's degree. Amends list of statutes implemented.

584-017-0390: *Verification of Program Completion (School Psychology)* – Amends requirements for verification of school psychology program completion. Requires passage of civil rights and professional ethics test and submission of fingerprints. Updates minimum graduate credit hours required for Continuing Administrator License. Amends list of statutes implemented.

584-017-0480: *Verification of Program Completion (School Counseling)* – Amends requirements for verification of school counseling program completion. Requires passage of civil rights and ethics test and fingerprint submission. Amends list of statutes implemented.

584-060-0210: *Emergency Teaching License* – Clarifies requirements for the letter a school district must provide when requesting license. Amends list of statutes implemented.

584-060-0220: *International Visiting Teacher* – Amends requirements to include passage of the civil rights and professional ethics test at first renewal. Amends list of statutes implemented.

584-070-0211: *Initial School Psychologist License* – Clarifies that first license is issued for three years plus time to applicant's birthday. Requires licensee to pass the Oregon civil rights and professional ethics test. Amends list of statutes implemented.

584-070-0221: *Continuing School Psychologist License* – Clarifies the valid roles of the Continuing School Psychologist license. Amends list of statutes implemented.

584-070-0271: *Transitional School Psychologist License* – Clarifies the valid roles of the Transitional School Psychologist license. Amends list of statutes implemented.

**AMEND AND RENUMBER:** 584-048-0065 to 584-044-0048: *Basic Personnel Service License Renewal* – Amends list of statutes implemented and renumbers rule to proper division.

**REPEAL:** 584-042-0002: (CTE) *Definitions* – Repeals obsolete rule.

584-042-0006: Three-Year Career and Technical Education Teaching License - Repeals obsolete rule.

584-042-0009: Adding Career and Technical Education Endorsements – Repeals obsolete rule.

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

## 584-010-0090

### Program Completion Fast Track — Field Operation Audit

(1) The Commission will provide a program completion fast-track option to units. The fast-track option will grant an expedited license to completers of commission-approved programs.

(2) The license will be granted so long as it is evident that all requirements of the license have been met.

(3) For participating units, the commission will schedule biennial field operation audits of the program completion process of each unit.

(a) The review shall audit five (5) percent of the files of program completers at the unit;

(b) A minimum of fifteen (15) files will be reviewed regardless of the number of program completers recommended by a unit for licensure; and

(c) In the event there are less than fifteen (15) files total, all files will be reviewed.

(4) The audit review team will be composed of commission staff, including at least one (1) licensure evaluator.

(5) The review shall examine files and documents for each commission-approved program. These files and documents include:

(a) Documentation of degrees identified on the Program Completion Report, including:

- (A) Degree level;
- (B) Institution granting degree;
- (C) Date degree granted; and
- (D) Major, if specified;
- (b) Coursework completion date;

(c) Evidence of subject-matter mastery. Preferred documentation is passing scores on subject-matter test(s). In the alternative, completion of alternative assessment process, per OAR 584-052-0031;

(d) Evidence of basic skills mastery. Preferred documentation is passing scores on one of commission-approved basic skills tests. In the alternative, completion of specified coursework, per OAR 584-036-0082;

(e) Evidence of civil rights knowledge. Document is passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics.

(f) Evidence of fingerprint clearance prior to placement into any practicum experience pursuant to OAR 584-017-0055; and

(g) Basis for recommendation of program completion requirements.

(6) As part of the audit, the review team shall examine the following commission agency files and documents for randomly chosen audited candidates:

(a) PA1 forms submitted;

(b) Evidence of fingerprint clearance;

(c) Notices of Noncompliance issued to programs;

(d) C1 — Educator application forms;

(e) Appropriate test score records;

(f) Fees;

(g) License issued, based on C-2 request and information; and

(h) Any appropriate correspondence based on licensure.

(7) All results of these audits shall be reported to the commission by commission staff at the next regularly scheduled meeting following the unit's audit.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-017-0200

### Verification of Program Completion

The unit assures that candidates have completed the program successfully.

(1) The unit documents that candidates for licensure have acquired the knowledge and demonstrated the competencies required for the authorization level(s) and endorsement(s).

(2) The unit documents that candidates for licensure have completed the required practica successfully.

(3) The unit attests that candidates comply with Standards for Competent and Ethical Performance of Oregon Educators in OAR 584 division 20.

(4) The unit attests that the candidates have passed all licensure tests required for the authorization levels and endorsements for which the unit is recommending, including basic skills and the commission-approved test of knowledge of U.S. and Oregon civil rights and ethics. Evidence of program completion is stored in each student's appropriate files including a copy of the C-2 form filed with the Commission as verification of the student's having met all licensure requirements.

(5) Program completion for purposes of reporting under Title II of the Higher Education Act (HEA) means the latest date at which a candidate completes all of the requirements for an Initial I Teaching License.

(a) All candidates completing an approved program must be reported to the Commission for Title II HEA reporting purposes in the year in which all requirements are completed whether the candidate applies for licensure with TSPC.

(b) The unit agrees to not recommend candidates for licensure in any state unless the candidate completes all the requirements for an Initial I Teaching License.

(6) The unit attests that all candidates for an Initial I Teaching License will hold a minimum of a bachelor's degree from a regionally accredited institution or from an institution that is deemed to offer a degree comparable to a regionally accredited institution as approved by the Oregon Office of Degree Authorization, including but not limited to a foreign equivalent of such a degree.

(7) The unit attests that all candidates for a Continuing Teaching License will hold a master's or higher degree in arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455-342.495, 342.553

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 4-2007, f. & cert. ef. 6-14-07; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

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## 584-017-0201

### Substitute License When Program is Not Complete

(1) The commission will issue a non-renewable unrestricted Substitute Teaching License to a qualified candidate for whom the unit has submitted documentation of completion of academic requirements and the commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics but without completion of other licensure requirements.

(2) The Substitute Teaching License will be valid for three years only and will be issued pursuant to OAR 584-060-0181. These candidates will be reported by the unit as a program completer in the year that all of the candidate's licensure requirements are completed.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455-342.495, 342.553

Hist.: TSPC 3-2000, f. 7-17-00, cert. ef. 9-1-00; Renumbered from 584-010-0130, TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-017-0300

### Verification of Program Completion (Administrators)

The unit assures that candidates have completed the program successfully.

(1) The unit documents that candidates for licensure have acquired the knowledge and demonstrated the competencies required for the authorization level(s) and endorsement(s) required for these licenses.

(2) The unit attests that the candidates have passed the commission-approved tests for administrator content knowledge and U.S. and Oregon civil rights and professional ethics when appropriate.

(3) The unit attests that all candidates for licensure submitted fingerprints to the Commission and were cleared prior to placement in any practicum for licensure. Prior fingerprint clearance under previous licensure waives this requirement.

(4) The unit documents that candidates for licensure have completed the required practica successfully.

(5) The unit attests that candidates recommended for licensure comply with Standards for Competent and Ethical Performance of Oregon Educators in division 020.

(6) The unit attests that all candidates for the Initial Administrator License will hold a Master's degree or higher in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

(7) The unit attests that all candidates for Continuing Administrator License shall have completed a minimum of 18 semester hours or 27 quarter hours of graduate credit beyond the Master's degree.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495, 342.553

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-017-0390

### Verification of Program Completion (School Psychology)

The unit assures that candidates have completed the program successfully.

(1) The unit documents that candidates for licensure have acquired the knowledge and demonstrated the competencies required for the authorization level(s) and endorsement(s) required for these licenses.

(2) The unit attests that the candidates have passed the commission-approved tests for school psychology content knowledge and U.S. and Oregon civil rights and professional ethics.

(3) The unit attests that all candidates for licensure submitted fingerprints to the commission and were cleared prior to placement in any practicum for licensure. Prior fingerprint clearance under previous licensure waives this requirement.

(4) The unit documents that candidates for licensure have completed the required practica successfully.

(5) The unit attests that candidates comply with Standards for Competent and Ethical Performance of Oregon Educators in division 020.

(6) The unit attests that all candidates for the Initial School Psychologist License will hold a minimum of a Master's degree in behavioral sciences from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

(7) The unit attests that all candidates for the Continuing School Psychologist License will have completed an advanced program in psychologist competencies consisting of a minimum of six semester hours or nine quarter hours of graduate credit.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495, 342.553

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-017-0480

### Verification of Program Completion (School Counseling)

The unit assures that candidates have completed the program successfully.

(1) The unit documents that candidates for licensure have acquired the knowledge and demonstrated the competencies required for the authorization level(s) and endorsement(s) required for these licenses.

(2) The unit attests that the candidates have passed the commission-approved tests for school counseling content knowledge and U.S. and Oregon civil rights and professional ethics.

(3) The unit attests that all candidates for licensure submitted fingerprints to the Commission and were cleared prior to placement in any practicum for licensure. Prior fingerprint clearance under previous licensure waives this requirement.

(4) The unit documents that candidates for licensure have completed the required practica successfully.

(5) The unit attests that candidates comply with Standards for Competent and Ethical Performance of Oregon Educators in division 020.

(6) The unit attests that all candidates for the Initial I School Counselor License in a Track I program will hold a minimum of a Master's degree from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

(7) The unit attests that all candidates for the Initial I School Counselor License in a Track II program will hold a minimum of a Master's degree in the behavioral sciences from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

(8) The unit attests that all candidates for the Continuing School Counselor License will hold a minimum of a Master's degree in behavioral sciences and have completed beyond the Initial program in school counseling an advanced program consisting of a minimum of six semester or nine quarter hours of graduate credit to include 400 clock hours of practicum.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495, 342.553

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-044-0048

### Basic Personnel Service License Renewal

(1)(a) A Basic Personnel Service License may be renewed once for three years on recommendation of an institution offering an approved program for personnel service specialists.

(b) The recommendation shall be contingent upon satisfactory completion of nine quarter or six semester hours of the program leading to a Standard Personnel Service License.

(c) The additional preparation must be completed subsequent to issuance of the current license unless completion of the academic requirements for the Standard Personnel Service License has been verified prior to application for renewal of the Basic Personnel Service License.

(2) This preparation must be completed in the institution or in an inservice training program offered by a school district and for which credit is given by the institution or by some combination of both in accordance with Commission rules.

(3) At the time the second Basic Personnel Service License expires, the educator must have completed academic requirements for the Standard Personnel Service License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.553

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; Renumbered from 584-048-0065 by TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-060-0210

### Emergency Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant and a co-applicant district may be granted an Emergency Teaching License. An Emergency Teaching License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The Emergency Teaching License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students. In most cases, an Emergency Teaching License will not exceed one year unless the educator or the



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district has presented unusual extenuating circumstances. The Executive Director may consider efforts the educator has made in meeting licensure requirements. Additionally, the Executive Director will consider academic preparation or experience the proposed educator has had in the area in which the district is requesting the license.

(3) To be eligible for the Emergency Teaching License an applicant and co-applicant district must provide the following:

(a) C-1 application and fee;

(b) Fingerprints furnished 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;

(c) A letter from the district detailing the extenuating circumstances constituting the emergency and the applicant's unique skills qualifying her or him for the license. The letter should include a request for the least amount of time necessary to meet the emergency needs of the district; and

(d) An applicant may be asked to provide a resume, transcripts or other evidence of qualifications if requested by the Executive Director.

(4) The Emergency Teaching License is not subject to the 120 day grace period allowed for licensure renewal purposes under ORS 342.127.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.533

Hist.: TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 8-2004(Temp), f. & cert. ef. 9-10-04 thru 3-9-05 (Suspended by TSPC 9-2004(Temp), f. & cert. ef. 9-5-04 thru 3-9-05); TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 7-2010, f. & cert. ef. 9-15-10; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 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-approved 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; and

(B) That 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

## 584-070-0205

### Scope of School Psychology

The Initial, Continuing or Transitional School Psychologist License authorizes the holder to perform the following duties:

(1) Provide services that enhance academic performance;

(2) Design strategies and programs to address problems of adjustment;

(3) Consult with other educators and parents on issues of social development and behavioral and academic difficulties;

(4) Conduct psycho-educational assessment for purposes of identifying special needs;

(5) Provide psychological counseling for individuals, groups and families; and

(6) Coordinate intervention strategies for management of individuals and school-wide crises.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.533

Hist.: TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-070-0211

### Initial School Psychologist License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted an Initial School Psychologist License for three years. The first license will be issued for three years plus time to the applicant's birthday.

(2) The Initial School Psychologist License is valid for:

(a) School psychology at all age or grade levels;

(b) Substitute counseling at any level; and

(c) Substitute teaching at any level in any specialty.

(3) To be eligible for an Initial School Psychologist License, an applicant must satisfy all of the following general preparation requirements:

(a) Have a master's or higher degree in the behavioral sciences or their derivative therapeutic professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree in any field;

(b) Complete in Oregon or another U.S. jurisdiction, as part of the master's degree or separately, an initial graduate program in school psychology at an institution approved for psychologist education by the commission; or obtained certification from the National Association of School Psychologists.

(c) Obtained a passing score as currently specified by the commission on a test of professional knowledge for school psychologists, or completed five years of experience practicing school psychology on a license valid for the assignment full time in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license;

(d) Obtained a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights laws and professional ethics, unless this requirement has already been satisfied when obtaining a preceding Oregon educator's license or registration; 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) The Initial School Psychologist License may be renewed repeatedly for three years upon completion of a professional development plan in accordance with OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.533

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 8-2008, f. & cert. ef. 11-13-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

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## 584-070-0221

### Continuing School Psychologist License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Continuing School Psychologist License.

(2) The Continuing School Psychologist License is issued for: five years and is renewable repeatedly under conditions specified below.

(3) The Continuing School Psychologist License is valid for:

- (a) School psychology at all age or grade levels,
- (b) Substitute counseling at any level; and
- (c) Substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing School Psychologist License, an applicant must:

(a) Meet and complete all of the requirements for the Initial School Psychologist License;

(b) Hold a master's or higher degree in the behavioral sciences or their derivative therapeutic professions from a regionally accredited institution in the United States, or hold the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree;

(c) Have five years of school psychology experience at least half-time or more on any non-provisional license appropriate for the assignment; and

(d) Demonstrate minimum competencies, knowledge and skills in accordance with OAR 584-017-0360 by completing one of the following:

(A) Complete an advanced program in psychologist competencies consisting of at least six semester hours or nine quarter hours of graduate credit or the equivalent; or

(B) Validation of all advanced psychology competencies through assessment by a commission-approved professional development program offered by an institution, an employer, or the two working together; or

(C) By obtaining a current National School Psychology Certificate awarded by the National Association of School Psychologists; or

(D) By having a regionally accredited doctor's degree in educational, clinical or counseling psychology.

(5) The Continuing School Psychologist License may be renewed for five years upon completion of a professional development plan in accordance with OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495, 342.533

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 8-2008, f. & cert. ef. 11-13-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-070-0271

### Transitional School Psychologist License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Transitional School Psychologist License.

(2) The Transitional School Psychologist License is issued for eighteen months and is renewable.

(3) The Transitional School Psychologist License is valid for:

- (a) School psychology at all age or grade levels,
- (b) Substitute counseling at any level;
- (c) Substitute teaching at any level in any specialty.

(4) To be eligible for a Transitional School Psychologist License, the applicant must:

(a) Have a master's or higher degree in educational psychology or therapeutic psychology from a regionally accredited institution or approved foreign equivalent;

(b) Show evidence of licensure to practice school psychology in any state or comparable jurisdiction;

(c) Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

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 5-2001, f. & cert. ef. 12-13-01; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-070-0401

### Scope of School Social Worker Licensure

The Initial, Continuing or Transitional School Social Worker License authorizes the holder to perform the following duties:

(1) Assess home, school, personal, and community factors that may affect a student's learning;

(2) Identify and provide intervention strategies for children and their families, including counseling, case management and crisis intervention;

(3) Consult with teachers, administrators and other school staff regarding social and emotional needs of students; and

(4) Coordinate family, school and community resources on behalf of students.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495, 342.533

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-070-0411

### Initial School Social Worker License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted an Initial School Social Worker License for three years. The first license will be issued for three years plus time to the applicant's birthday.

(2) The Initial School Social Worker License is valid for:

- (a) School social work at all age or grade levels;
- (b) Substitute counseling at any level; and
- (c) Substitute teaching at any level in any specialty.

(3) To be eligible for an Initial School Social Worker License, an applicant must satisfy all of the following general preparation requirements:

(a) A master's or higher degree in social work from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree in any field;

(b) Completion of an initial graduate program in school social work as part of the master's degree or separately at an institution approved for school social worker education by the commission;

(c) A passing score as currently specified by the commission on a test of professional knowledge for school social workers, or five years of experience practicing school social work on a license valid for the assignment full time in a public school or regionally accredited private school in a U.S. jurisdiction or foreign equivalent before holding any Oregon license;

(d) A passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights laws 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); and

(f) A license issued by the Oregon Board of Licensed Social Workers.

(4) The Initial School Social Worker License may be renewed repeatedly for three years upon completion of professional development requirements in accordance with OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.533

Hist.: TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

## 584-070-0421

### Continuing School Social Worker License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Continuing School Social Worker License.

(2) The Continuing School Psychologist License is issued for five years and is renewable repeatedly under conditions specified below.

(3) The Continuing School Psychologist License is valid for:

- (a) School psychology at all age or grade levels;
- (b) Substitute counseling at any level, and
- (c) Substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing School Psychologist License, an applicant must:

(a) Meet and complete all of the requirements for the Initial School Social Worker License;

(b) Hold a master's or higher degree in social work from a regionally accredited institution in the United States, or hold the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree;

(c) Hold an active license with the Oregon Board of Licensed Social Workers;

(d) Have five years of school social worker experience at least half-time or more on any non-provisional TSPC or out-of-state educator license appropriate for the social worker assignment; and

(e) Demonstrate minimum competencies, knowledge and skills in accordance with OAR 584-017-0551 by completing one of the following:

(A) By completing an advanced commission-approved program in school social worker competencies consisting of at least six semester hours or nine quarter hours of graduate credit or the equivalent; or

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(B) Validation of all advanced school social worker competencies through assessment by a commission-approved professional development program offered by an institution, an employer, or the two working together; or

(C) By showing evidence of being a Certified School Social Work Specialist awarded by the National Association of Social Workers; or

(D) By having a regionally accredited doctor's degree in social work.

(5) The Continuing School Social Worker License may be renewed for five years upon completion of professional development requirements in accordance with OAR 584-090.

Stat. Auth.: ORS 342

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

Hist.: TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11

### 584-070-0431

#### Transitional School Social Worker License for First Time Out-of-State Applicants

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Transitional School Social Worker License.

(2) The Transitional School Social Worker License is issued for eighteen months and is not renewable.

(3) The Transitional School Social Worker License is valid for:

(a) School social work at all age or grade levels;

(b) Substitute counseling at any level; and

(c) Substitute teaching at any level in any specialty.

(4) Transitional School Social Workers must qualify for either an Initial School Social Worker or Continuing School Social Worker at the expiration of license in eighteen months.

(5) To be eligible for a Transitional School Social Worker License, the applicant must:

(a) Have a master's or higher degree in social work from a regionally accredited institution or approved foreign equivalent;

(b) Hold an unrestricted school social worker license or certificate in any state or comparable jurisdiction;

(c) Hold an active license with the Oregon Board of Licensed Social Workers; 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.)

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 -342.430

Hist.: TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11



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172-005-0040	1-10-2011	Amend	2-1-2011	259-008-0011	12-23-2010	Amend	2-1-2011
172-005-0050	1-10-2011	Amend	2-1-2011	259-008-0011(T)	12-23-2010	Repeal	2-1-2011
172-005-0060	1-10-2011	Amend	2-1-2011	291-015-0100	11-19-2010	Amend	1-1-2011
172-005-0065	1-10-2011	Adopt	2-1-2011	291-015-0100(T)	11-19-2010	Repeal	1-1-2011
172-005-0070	1-10-2011	Amend	2-1-2011	291-015-0105	11-19-2010	Amend	1-1-2011
177-040-0000	1-1-2011	Amend	2-1-2011	291-015-0105(T)	11-19-2010	Repeal	1-1-2011
177-040-0001	1-1-2011	Amend	2-1-2011	291-015-0110	11-19-2010	Amend	1-1-2011
177-040-0003	1-1-2011	Amend	2-1-2011	291-015-0110(T)	11-19-2010	Repeal	1-1-2011
177-040-0024	1-1-2011	Adopt	2-1-2011	291-015-0115	11-19-2010	Amend	1-1-2011
177-040-0070	1-1-2011	Amend	2-1-2011	291-015-0115(T)	11-19-2010	Repeal	1-1-2011
177-085-0065	12-12-2010	Amend	1-1-2011	291-015-0120	11-19-2010	Amend	1-1-2011
177-094-0080	12-1-2010	Amend	1-1-2011	291-015-0120(T)	11-19-2010	Repeal	1-1-2011
177-098-0010	12-12-2010	Amend	1-1-2011	291-015-0125	11-19-2010	Amend	1-1-2011
177-098-0040	12-12-2010	Amend	1-1-2011	291-015-0125(T)	11-19-2010	Repeal	1-1-2011
177-098-0060	12-12-2010	Amend	1-1-2011	291-015-0130	11-19-2010	Repeal	1-1-2011
177-098-0110	12-12-2010	Amend	1-1-2011	291-015-0135	11-19-2010	Amend	1-1-2011
190-001-0000	12-1-2010	Repeal	1-1-2011	291-015-0135(T)	11-19-2010	Repeal	1-1-2011
190-001-0005	12-1-2010	Repeal	1-1-2011	291-015-0140	11-19-2010	Repeal	1-1-2011
190-010-0000	1-3-2011	Repeal	2-1-2011	291-015-0145	11-19-2010	Repeal	1-1-2011
190-010-0005	1-3-2011	Repeal	2-1-2011	291-015-0150	11-19-2010	Repeal	1-1-2011
190-010-0010	1-3-2011	Repeal	2-1-2011	291-048-0100	12-13-2010	Am. & Ren.(T)	1-1-2011
190-010-0015	1-3-2011	Repeal	2-1-2011	291-048-0110	12-13-2010	Am. & Ren.(T)	1-1-2011
190-010-0020	1-3-2011	Repeal	2-1-2011	291-048-0115	12-13-2010	Am. & Ren.(T)	1-1-2011
190-010-0025	1-3-2011	Repeal	2-1-2011	291-048-0120	12-13-2010	Suspend	1-1-2011
190-010-0030	1-3-2011	Repeal	2-1-2011	291-048-0130	12-13-2010	Am. & Ren.(T)	1-1-2011
190-010-0035	1-3-2011	Am. & Ren.	2-1-2011	291-048-0140	12-13-2010	Am. & Ren.(T)	1-1-2011
190-010-0040	1-3-2011	Repeal	2-1-2011	291-048-0150	12-13-2010	Am. & Ren.(T)	1-1-2011
213-013-0010	1-1-2012	Amend	1-1-2011	291-048-0160	12-13-2010	Am. & Ren.(T)	1-1-2011
213-017-0006	12-26-2010	Amend	1-1-2011	291-048-0170	12-13-2010	Am. & Ren.(T)	1-1-2011
213-017-0006(T)	12-26-2010	Repeal	1-1-2011	291-048-0180	12-13-2010	Suspend	1-1-2011
213-070-0000	1-1-2011	Adopt	1-1-2011	291-048-0190	12-13-2010	Am. & Ren.(T)	1-1-2011
213-070-0005	1-1-2011	Adopt	1-1-2011	291-048-0230	12-13-2010	Adopt(T)	1-1-2011
213-070-0010	1-1-2011	Adopt	1-1-2011	291-048-0240	12-13-2010	Adopt(T)	1-1-2011
213-070-0020	1-1-2011	Adopt	1-1-2011	291-048-0270	12-13-2010	Adopt(T)	1-1-2011

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291-048-0320	12-13-2010	Adopt(T)	1-1-2011	330-070-0027	12-22-2010	Amend	2-1-2011
291-063-0010	12-1-2010	Amend(T)	1-1-2011	330-070-0045	12-22-2010	Amend	2-1-2011
291-063-0016	12-1-2010	Amend(T)	1-1-2011	330-070-0055	12-22-2010	Amend	2-1-2011
291-063-0030	12-1-2010	Amend(T)	1-1-2011	330-070-0059	12-22-2010	Amend	2-1-2011
291-124-0005	11-19-2010	Amend	1-1-2011	330-070-0060	12-22-2010	Amend	2-1-2011
291-124-0010	11-19-2010	Amend	1-1-2011	330-070-0062	12-22-2010	Amend	2-1-2011
291-124-0015	11-19-2010	Repeal	1-1-2011	330-070-0063	12-22-2010	Amend	2-1-2011
291-124-0016	11-19-2010	Adopt	1-1-2011	330-070-0064	12-22-2010	Amend	2-1-2011
291-124-0017	11-19-2010	Adopt	1-1-2011	330-070-0070	12-22-2010	Amend	2-1-2011
291-124-0020	11-19-2010	Amend	1-1-2011	330-070-0073	12-22-2010	Amend	2-1-2011
291-124-0025	11-19-2010	Repeal	1-1-2011	330-070-0089	12-22-2010	Amend	2-1-2011
291-124-0030	11-19-2010	Amend	1-1-2011	330-070-0091	12-22-2010	Amend	2-1-2011
291-124-0035	11-19-2010	Amend	1-1-2011	330-070-0097	12-22-2010	Amend	2-1-2011
291-124-0041	11-19-2010	Amend	1-1-2011	330-090-0105	11-23-2010	Amend	1-1-2011
291-124-0055	11-19-2010	Amend	1-1-2011	330-090-0105(T)	11-23-2010	Repeal	1-1-2011
291-124-0060	11-19-2010	Amend	1-1-2011	330-090-0110	11-23-2010	Amend	1-1-2011
291-124-0065	11-19-2010	Amend	1-1-2011	330-090-0110(T)	11-23-2010	Repeal	1-1-2011
291-124-0070	11-19-2010	Amend	1-1-2011	330-090-0120	11-23-2010	Amend	1-1-2011
291-124-0075	11-19-2010	Amend	1-1-2011	330-090-0120(T)	11-23-2010	Repeal	1-1-2011
291-124-0080	11-19-2010	Amend	1-1-2011	330-090-0130	11-23-2010	Amend	1-1-2011
291-124-0085	11-19-2010	Amend	1-1-2011	330-090-0130(T)	11-23-2010	Repeal	1-1-2011
291-124-0090	11-19-2010	Adopt	1-1-2011	330-090-0133	11-23-2010	Amend	1-1-2011
291-124-0095	11-19-2010	Repeal	1-1-2011	330-090-0133(T)	11-23-2010	Repeal	1-1-2011
309-100-0100	1-7-2011	Adopt(T)	2-1-2011	330-090-0140	11-23-2010	Amend	1-1-2011
309-100-0110	1-7-2011	Adopt(T)	2-1-2011	330-090-0140(T)	11-23-2010	Repeal	1-1-2011
309-100-0120	1-7-2011	Adopt(T)	2-1-2011	330-090-0150	11-23-2010	Amend	1-1-2011
309-100-0130	1-7-2011	Adopt(T)	2-1-2011	330-090-0150(T)	11-23-2010	Repeal	1-1-2011
309-100-0140	1-7-2011	Adopt(T)	2-1-2011	330-090-0350	11-23-2010	Adopt	1-1-2011
309-100-0150	1-7-2011	Adopt(T)	2-1-2011	330-090-0350(T)	11-23-2010	Repeal	1-1-2011
309-102-0000	1-7-2011	Suspend	2-1-2011	330-090-0450	11-23-2010	Adopt	1-1-2011
309-102-0005	1-7-2011	Suspend	2-1-2011	330-090-0450(T)	11-23-2010	Repeal	1-1-2011
309-102-0010	1-7-2011	Suspend	2-1-2011	330-112-0000	12-15-2010	Adopt	1-1-2011
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	Amend(T)	1-1-2011	330-112-0030(T)	12-15-2010	Repeal	1-1-2011
309-114-0050	11-19-2010	Amend(T)	1-1-2011	330-112-0040	12-15-2010	Adopt	1-1-2011
309-114-0060	11-19-2010	Amend(T)	1-1-2011	330-112-0040(T)	12-15-2010	Repeal	1-1-2011
309-114-0070	11-19-2010	Amend(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	332-015-0000	1-1-2011	Amend	2-1-2011
330-070-0025	12-22-2010	Amend	2-1-2011	332-015-0010	1-1-2011	Repeal	2-1-2011



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332-015-0040	1-1-2011	Amend	2-1-2011	333-076-0265	12-15-2010	Adopt	1-1-2011
332-015-0050	1-1-2011	Amend	2-1-2011	333-076-0270	12-15-2010	Adopt	1-1-2011
332-015-0060	1-1-2011	Repeal	2-1-2011	333-255-0070	1-6-2011	Amend	2-1-2011
332-015-0065	1-1-2011	Repeal	2-1-2011	333-255-0070(T)	1-6-2011	Repeal	2-1-2011
332-015-0070	1-1-2011	Amend	2-1-2011	333-255-0071	1-6-2011	Amend	2-1-2011
332-015-0080	1-1-2011	Adopt	2-1-2011	333-255-0072	1-6-2011	Amend	2-1-2011
332-020-0000	1-1-2011	Amend	2-1-2011	333-255-0073	1-6-2011	Amend	2-1-2011
332-020-0010	1-1-2011	Amend	2-1-2011	333-265-0050	1-6-2011	Amend	2-1-2011
332-020-0015	1-1-2011	Amend	2-1-2011	333-265-0090	1-6-2011	Amend	2-1-2011
332-020-0017	1-1-2011	Adopt	2-1-2011	333-265-0090(T)	1-6-2011	Repeal	2-1-2011
332-020-0020	1-1-2011	Amend	2-1-2011	333-265-0105	1-6-2011	Amend	2-1-2011
332-020-0020(T)	1-1-2011	Repeal	2-1-2011	333-265-0105(T)	1-6-2011	Repeal	2-1-2011
332-025-0020	1-1-2011	Amend	2-1-2011	333-265-0110	1-6-2011	Amend	2-1-2011
332-025-0021	1-1-2011	Amend	2-1-2011	333-500-0005	12-15-2010	Amend	1-1-2011
332-025-0022	1-1-2011	Amend	2-1-2011	333-500-0010	12-15-2010	Amend	1-1-2011
332-025-0030	1-1-2011	Amend	2-1-2011	333-500-0020	12-15-2010	Amend	1-1-2011
332-025-0040	1-1-2011	Amend	2-1-2011	333-500-0025	12-15-2010	Amend	1-1-2011
332-025-0050	1-1-2011	Amend	2-1-2011	333-500-0030	12-15-2010	Amend	1-1-2011
332-025-0060	1-1-2011	Amend	2-1-2011	333-500-0031	12-15-2010	Adopt	1-1-2011
332-025-0070	1-1-2011	Adopt	2-1-2011	333-500-0034	12-15-2010	Amend	1-1-2011
332-025-0080	1-1-2011	Adopt	2-1-2011	333-500-0040	12-15-2010	Amend	1-1-2011
332-025-0100	1-1-2011	Adopt	2-1-2011	333-500-0065	12-15-2010	Amend	1-1-2011
332-030-0000	1-1-2011	Amend	2-1-2011	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
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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	340-016-0080	12-20-2010	Amend	2-1-2011
333-076-0111	12-15-2010	Amend	1-1-2011	340-016-0088	12-20-2010	Adopt	2-1-2011
333-076-0114	12-15-2010	Amend	1-1-2011	340-016-0100	12-20-2010	Repeal	2-1-2011
333-076-0115	12-15-2010	Amend	1-1-2011	340-016-0110	12-20-2010	Repeal	2-1-2011
333-076-0125	12-15-2010	Amend	1-1-2011	340-016-0120	12-20-2010	Repeal	2-1-2011
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333-076-0165	12-15-2010	Amend	1-1-2011	340-200-0040	12-10-2010	Amend	1-1-2011
333-076-0170	12-15-2010	Amend	1-1-2011	340-220-0030	12-20-2010	Amend	2-1-2011
333-076-0175	12-15-2010	Amend	1-1-2011	340-220-0040	12-20-2010	Amend	2-1-2011
333-076-0180	12-15-2010	Amend	1-1-2011	340-220-0050	12-20-2010	Amend	2-1-2011
333-076-0190	12-15-2010	Amend	1-1-2011	340-223-0010	12-10-2010	Amend	1-1-2011
333-076-0250	12-15-2010	Adopt	1-1-2011	340-223-0020	12-10-2010	Amend	1-1-2011
333-076-0255	12-15-2010	Adopt	1-1-2011	340-223-0030	12-10-2010	Amend	1-1-2011

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340-223-0050	12-10-2010	Amend	1-1-2011	410-136-0160	1-1-2011	Amend	1-1-2011
340-223-0060	12-10-2010	Adopt	1-1-2011	410-136-0180	1-1-2011	Amend	1-1-2011
340-223-0070	12-10-2010	Adopt	1-1-2011	410-136-0200	1-1-2011	Amend	1-1-2011
340-223-0080	12-10-2010	Adopt	1-1-2011	410-136-0220	1-1-2011	Amend	1-1-2011
407-045-0260	1-1-2011	Amend	2-1-2011	410-136-0240	1-1-2011	Amend	1-1-2011
407-045-0260(T)	1-1-2011	Repeal	2-1-2011	410-136-0300	1-1-2011	Amend	1-1-2011
407-045-0820	1-1-2011	Amend	2-1-2011	410-136-0320	1-1-2011	Amend	1-1-2011
407-045-0820(T)	1-1-2011	Repeal	2-1-2011	410-136-0340	1-1-2011	Amend	1-1-2011
410-120-0030	1-1-2011	Amend	2-1-2011	410-136-0350	1-1-2011	Amend	1-1-2011
410-120-1195	1-1-2011	Amend	2-1-2011	410-136-0440	1-1-2011	Amend	1-1-2011
410-120-1200	1-1-2011	Amend	2-1-2011	410-136-0800	1-1-2011	Amend	1-1-2011
410-120-1230	1-1-2011	Amend	2-1-2011	410-136-0820	1-1-2011	Amend	1-1-2011
410-120-1280	1-1-2011	Amend	2-1-2011	410-136-0840	1-1-2011	Amend	1-1-2011
410-120-1295	1-1-2011	Amend	2-1-2011	410-136-0860	1-1-2011	Amend	1-1-2011
410-120-1340	1-1-2011	Amend	2-1-2011	410-138-0000	1-1-2011	Amend	2-1-2011
410-121-0000	1-1-2011	Amend	2-1-2011	410-138-0005	1-1-2011	Amend	2-1-2011
410-121-0030	1-1-2011	Amend	2-1-2011	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

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410-142-0110	1-1-2011	Adopt	1-1-2011	413-070-0500	12-29-2010	Amend	2-1-2011
410-142-0200	1-1-2011	Amend	1-1-2011	413-070-0505	12-29-2010	Amend	2-1-2011
410-142-0225	1-1-2011	Amend	1-1-2011	413-070-0510	12-29-2010	Amend	2-1-2011
410-142-0240	1-1-2011	Amend	1-1-2011	413-070-0514	12-29-2010	Adopt	2-1-2011
410-142-0280	1-1-2011	Amend	1-1-2011	413-070-0515	12-29-2010	Am. & Ren.	2-1-2011
410-142-0300	1-1-2011	Amend	1-1-2011	413-070-0516	12-29-2010	Adopt	2-1-2011
410-146-0021	1-1-2011	Amend	1-1-2011	413-070-0517	12-29-2010	Repeal	2-1-2011
410-146-0085	1-1-2011	Amend	1-1-2011	413-070-0518	12-29-2010	Adopt	2-1-2011
410-146-0086	1-1-2011	Amend	1-1-2011	413-070-0519	12-29-2010	Adopt	2-1-2011
410-146-0120	1-1-2011	Amend	1-1-2011	413-070-0520	12-29-2010	Amend	2-1-2011
410-146-0140	1-1-2011	Repeal	1-1-2011	413-070-0524	12-29-2010	Amend	2-1-2011
410-147-0120	1-1-2011	Amend	1-1-2011	413-070-0532	12-29-2010	Amend	2-1-2011
410-147-0140	1-1-2011	Amend	1-1-2011	413-070-0536	12-29-2010	Amend	2-1-2011
410-147-0200	1-1-2011	Amend	1-1-2011	413-070-0540	12-29-2010	Amend	2-1-2011
410-147-0220	1-1-2011	Repeal	1-1-2011	413-070-0548	12-29-2010	Am. & Ren.	2-1-2011
410-147-0320	1-1-2011	Amend	1-1-2011	413-070-0550	12-29-2010	Amend	2-1-2011
410-147-0480	1-1-2011	Amend	1-1-2011	413-070-0552	12-29-2010	Amend	2-1-2011
410-147-0610	1-1-2011	Repeal	1-1-2011	413-070-0556	12-29-2010	Amend	2-1-2011
411-031-0020	12-1-2010	Amend	1-1-2011	413-070-0565	12-29-2010	Amend	2-1-2011
411-031-0020(T)	12-1-2010	Repeal	1-1-2011	413-070-0570	12-28-2010	Adopt	2-1-2011
411-031-0040	12-1-2010	Amend	1-1-2011	413-070-0572	12-28-2010	Adopt	2-1-2011
411-031-0040(T)	12-1-2010	Repeal	1-1-2011	413-070-0574	12-28-2010	Adopt	2-1-2011
411-034-0010	1-1-2011	Amend	2-1-2011	413-070-0600	12-29-2010	Amend	2-1-2011
411-034-0020	1-1-2011	Amend	2-1-2011	413-070-0620	12-29-2010	Amend	2-1-2011
411-050-0412	1-1-2011	Amend	2-1-2011	413-070-0625	12-29-2010	Amend	2-1-2011
411-050-0499	1-1-2011	Repeal	2-1-2011	413-070-0630	12-29-2010	Amend	2-1-2011
411-304-0035	1-1-2011	Amend	2-1-2011	413-070-0640	12-29-2010	Amend	2-1-2011
411-320-0020	1-1-2011	Amend	2-1-2011	413-070-0645	12-29-2010	Amend	2-1-2011
411-320-0020(T)	1-1-2011	Repeal	2-1-2011	413-070-0651	12-29-2010	Adopt(T)	2-1-2011
411-320-0030	12-1-2010	Amend(T)	1-1-2011	413-070-0655	12-29-2010	Adopt(T)	2-1-2011
411-320-0045	12-1-2010	Amend(T)	1-1-2011	413-070-0660	12-29-2010	Adopt(T)	2-1-2011
411-320-0080	1-1-2011	Amend	2-1-2011	413-070-0665	12-29-2010	Adopt(T)	2-1-2011
411-320-0080(T)	1-1-2011	Repeal	2-1-2011	413-070-0670	12-29-2010	Adopt(T)	2-1-2011
411-320-0130	12-1-2010	Amend(T)	1-1-2011	413-110-0100	12-29-2010	Amend	2-1-2011
411-320-0170	12-1-2010	Amend(T)	1-1-2011	413-110-0110	12-29-2010	Amend	2-1-2011
411-320-0175	1-1-2011	Amend	2-1-2011	413-110-0120	12-29-2010	Repeal	2-1-2011
411-320-0175(T)	1-1-2011	Repeal	2-1-2011	413-110-0130	12-29-2010	Amend	2-1-2011
411-340-0030	11-17-2010	Amend(T)	1-1-2011	413-110-0132	12-29-2010	Adopt	2-1-2011
411-340-0040	11-17-2010	Amend(T)	1-1-2011	413-110-0140	12-29-2010	Repeal	2-1-2011
411-340-0060	11-17-2010	Amend(T)	1-1-2011	413-110-0150	12-29-2010	Adopt	2-1-2011
411-340-0120	11-17-2010	Amend(T)	1-1-2011	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
413-010-0081	12-29-2010	Amend	2-1-2011	413-120-0025	12-29-2010	Adopt	2-1-2011
413-010-0082	12-29-2010	Amend	2-1-2011	413-120-0030	12-29-2010	Repeal	2-1-2011
413-010-0083	12-29-2010	Amend	2-1-2011	413-120-0033	12-29-2010	Am. & Ren.	2-1-2011
413-010-0084	12-29-2010	Repeal	2-1-2011	413-120-0035	12-29-2010	Amend	2-1-2011
413-010-0085	12-29-2010	Amend	2-1-2011	413-120-0040	12-29-2010	Repeal	2-1-2011
413-010-0086	12-29-2010	Repeal	2-1-2011	413-120-0045	12-29-2010	Am. & Ren.	2-1-2011
413-010-0360	12-29-2010	Repeal	2-1-2011	413-120-0053	12-29-2010	Adopt	2-1-2011
413-010-0370	12-29-2010	Repeal	2-1-2011	413-120-0057	12-29-2010	Adopt	2-1-2011
413-010-0380	12-29-2010	Repeal	2-1-2011	413-120-0060	12-29-2010	Amend	2-1-2011
413-040-0240	1-4-2011	Amend	2-1-2011	413-120-0075	12-29-2010	Am. & Ren.	2-1-2011



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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	441-505-1135	12-1-2010	Adopt	1-1-2011
413-120-0700	12-29-2010	Adopt	2-1-2011	441-674-0005	1-1-2011	Adopt	2-1-2011
413-120-0710	12-29-2010	Adopt	2-1-2011	441-674-0005(T)	1-1-2011	Repeal	2-1-2011
413-120-0720	12-29-2010	Adopt	2-1-2011	441-674-0100	1-1-2011	Adopt	2-1-2011
413-120-0730	12-29-2010	Adopt	2-1-2011	441-674-0100(T)	1-1-2011	Repeal	2-1-2011
413-120-0750	12-29-2010	Adopt	2-1-2011	441-674-0120	1-1-2011	Adopt	2-1-2011
413-120-0760	12-29-2010	Adopt	2-1-2011	441-674-0120(T)	1-1-2011	Repeal	2-1-2011
413-120-0800	12-29-2010	Amend	2-1-2011	441-674-0130	1-1-2011	Adopt	2-1-2011
413-120-0810	12-29-2010	Amend	2-1-2011	441-674-0130(T)	1-1-2011	Repeal	2-1-2011
413-120-0820	12-29-2010	Repeal	2-1-2011	441-674-0140	1-1-2011	Adopt	2-1-2011
413-120-0830	12-29-2010	Amend	2-1-2011	441-674-0140(T)	1-1-2011	Repeal	2-1-2011
413-120-0840	12-29-2010	Adopt	2-1-2011	441-674-0210	1-1-2011	Adopt	2-1-2011
413-120-0850	12-29-2010	Adopt	2-1-2011	441-674-0210(T)	1-1-2011	Repeal	2-1-2011
413-120-0860	12-29-2010	Adopt	2-1-2011	441-674-0220	1-1-2011	Adopt	2-1-2011
413-120-0870	12-29-2010	Adopt	2-1-2011	441-674-0220(T)	1-1-2011	Repeal	2-1-2011
413-120-0900	12-28-2010	Adopt	2-1-2011	441-674-0230	1-1-2011	Adopt	2-1-2011
413-120-0905	12-28-2010	Adopt	2-1-2011	441-674-0230(T)	1-1-2011	Repeal	2-1-2011
413-120-0910	12-28-2010	Adopt	2-1-2011	441-674-0240	1-1-2011	Adopt	2-1-2011
413-120-0920	12-28-2010	Adopt	2-1-2011	441-674-0240(T)	1-1-2011	Repeal	2-1-2011
413-120-0925	12-28-2010	Adopt	2-1-2011	441-674-0250	1-1-2011	Adopt	2-1-2011
413-120-0930	12-28-2010	Adopt	2-1-2011	441-674-0250(T)	1-1-2011	Repeal	2-1-2011
413-120-0940	12-28-2010	Adopt	2-1-2011	441-674-0310	1-1-2011	Adopt	2-1-2011
413-120-0945	12-28-2010	Adopt	2-1-2011	441-674-0310(T)	1-1-2011	Repeal	2-1-2011

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441-674-0910(T)	1-1-2011	Repeal	2-1-2011	461-130-0335	1-1-2011	Amend	2-1-2011
441-674-0915	1-1-2011	Adopt	2-1-2011	461-135-0010	1-1-2011	Amend	2-1-2011
441-674-0915(T)	1-1-2011	Repeal	2-1-2011	461-135-0210	1-1-2011	Amend	2-1-2011
441-674-0920	1-1-2011	Adopt	2-1-2011	461-135-0210(T)	1-1-2011	Repeal	2-1-2011
441-674-0920(T)	1-1-2011	Repeal	2-1-2011	461-135-0400	1-1-2011	Amend	2-1-2011
441-710-0035	12-1-2010	Amend	1-1-2011	461-135-0400(T)	1-1-2011	Repeal	2-1-2011
441-710-0071	12-1-2010	Adopt	1-1-2011	461-135-0780	1-1-2011	Amend	2-1-2011
441-930-0010	1-1-2011	Amend	2-1-2011	461-135-1100	1-1-2011	Amend	2-1-2011
441-930-0030	1-1-2011	Amend	2-1-2011	461-135-1100(T)	1-1-2011	Repeal	2-1-2011
441-930-0035	1-1-2011	Adopt	2-1-2011	461-135-1125	1-1-2011	Amend	2-1-2011
441-930-0045	1-1-2011	Adopt	2-1-2011	461-135-1125(T)	1-1-2011	Repeal	2-1-2011
441-930-0065	1-1-2011	Adopt	2-1-2011	461-135-1195	1-1-2011	Amend	2-1-2011
441-930-0068	1-1-2011	Adopt	2-1-2011	461-135-1197	1-1-2011	Adopt	2-1-2011
441-930-0070	1-1-2011	Amend	2-1-2011	461-135-1250	1-1-2011	Amend	2-1-2011
441-930-0080	1-1-2011	Amend	2-1-2011	461-135-1250(T)	1-1-2011	Repeal	2-1-2011
441-930-0210	1-1-2011	Amend	2-1-2011	461-145-0140	1-1-2011	Amend(T)	2-1-2011
441-930-0220	1-1-2011	Amend	2-1-2011	461-145-0143	1-1-2011	Suspend	2-1-2011
441-930-0230	1-1-2011	Amend	2-1-2011	461-145-0220	1-1-2011	Amend(T)	2-1-2011
441-930-0240	1-1-2011	Amend	2-1-2011	461-150-0055	1-1-2011	Amend	2-1-2011
441-930-0250	1-1-2011	Amend	2-1-2011	461-150-0055	1-1-2011	Amend(T)	2-1-2011
441-930-0255	1-1-2011	Adopt	2-1-2011	461-150-0055(T)	1-1-2011	Repeal	2-1-2011
441-930-0260	1-1-2011	Amend	2-1-2011	461-155-0030	1-1-2011	Amend	2-1-2011
441-930-0267	1-1-2011	Adopt	2-1-2011	461-155-0030(T)	1-1-2011	Amend(T)	2-1-2011
441-930-0270	1-1-2011	Amend	2-1-2011	461-155-0035	1-1-2011	Repeal	2-1-2011
441-930-0280	1-1-2011	Repeal	2-1-2011	461-155-0035(T)	1-1-2011	Repeal	2-1-2011
441-930-0290	1-1-2011	Amend	2-1-2011	461-155-0180	1-1-2011	Amend	2-1-2011
441-930-0300	1-1-2011	Amend	2-1-2011	461-155-0180(T)	1-1-2011	Repeal	2-1-2011
441-930-0310	1-1-2011	Amend	2-1-2011	461-155-0225	1-1-2011	Amend	2-1-2011
441-930-0320	1-1-2011	Amend	2-1-2011	461-155-0225(T)	1-1-2011	Repeal	2-1-2011
441-930-0330	1-1-2011	Amend	2-1-2011	461-155-0320	1-1-2011	Amend	2-1-2011
441-930-0340	1-1-2011	Repeal	2-1-2011	461-155-0320(T)	1-1-2011	Repeal	2-1-2011
441-930-0350	1-1-2011	Amend	2-1-2011	461-155-0528	1-1-2011	Adopt	2-1-2011
441-930-0360	1-1-2011	Amend	2-1-2011	461-155-0528(T)	1-1-2011	Repeal	2-1-2011
442-005-0030	1-5-2011	Amend(T)	2-1-2011	461-155-0688	1-1-2011	Amend	2-1-2011
442-005-0030(T)	1-5-2011	Suspend	2-1-2011	461-155-0688(T)	1-1-2011	Repeal	2-1-2011
459-005-0040	11-24-2010	Adopt	1-1-2011	461-155-0693	1-1-2011	Amend	2-1-2011
459-060-0020	11-24-2010	Amend	1-1-2011	461-155-0693(T)	1-1-2011	Repeal	2-1-2011
461-001-0000	1-1-2011	Amend	2-1-2011	461-160-0015	1-1-2011	Amend(T)	2-1-2011
461-025-0311	1-1-2011	Amend	2-1-2011	461-160-0410	1-1-2011	Amend	2-1-2011
461-025-0311(T)	1-1-2011	Repeal	2-1-2011	461-160-0430	1-1-2011	Amend	2-1-2011
461-101-0010	1-1-2011	Amend	2-1-2011	461-160-0430	1-1-2011	Amend(T)	2-1-2011
461-101-0010(T)	1-1-2011	Repeal	2-1-2011	461-160-0430(T)	1-1-2011	Repeal	2-1-2011
461-110-0630	1-1-2011	Amend	2-1-2011	461-160-0530	1-1-2011	Repeal	2-1-2011
461-110-0630(T)	1-1-2011	Repeal	2-1-2011	461-160-0700	1-1-2011	Amend	2-1-2011
461-115-0071	1-1-2011	Amend	2-1-2011	461-160-0700	1-1-2011	Amend(T)	2-1-2011
461-115-0071(T)	1-1-2011	Repeal	2-1-2011	461-160-0700(T)	1-1-2011	Repeal	2-1-2011
461-120-0210	1-1-2011	Amend	2-1-2011	461-170-0011	1-1-2011	Amend	2-1-2011
461-130-0305	1-1-2011	Amend	2-1-2011	461-175-0010	1-1-2011	Amend	2-1-2011
461-130-0310	1-1-2011	Amend	2-1-2011	461-175-0010(T)	1-1-2011	Repeal	2-1-2011
461-130-0315	1-1-2011	Amend	2-1-2011	461-175-0200	1-1-2011	Amend	2-1-2011
461-130-0320	1-1-2011	Repeal	2-1-2011	461-175-0200(T)	1-1-2011	Repeal	2-1-2011
461-130-0323	1-1-2011	Repeal	2-1-2011	461-175-0250	1-1-2011	Amend	2-1-2011
461-130-0325	1-1-2011	Repeal	2-1-2011	461-175-0250(T)	1-1-2011	Repeal	2-1-2011
461-130-0327	1-1-2011	Amend	2-1-2011	461-190-0211	1-1-2011	Amend(T)	2-1-2011
461-130-0328	1-1-2011	Amend	2-1-2011				

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461-193-0560(T)	1-1-2011	Repeal	2-1-2011	584-070-0421	1-1-2011	Adopt	2-1-2011
471-010-0111	12-13-2010	Adopt	1-1-2011	584-070-0431	1-1-2011	Adopt	2-1-2011
471-031-0140	12-13-2010	Amend	1-1-2011	584-080-0031	1-1-2011	Amend	1-1-2011
471-031-0141	12-13-2010	Amend	1-1-2011	584-080-0153	1-1-2011	Amend	1-1-2011
471-031-0200	12-13-2010	Amend	1-1-2011	584-080-0161	1-1-2011	Amend	1-1-2011
471-031-0225	12-13-2010	Repeal	1-1-2011	584-080-0171	1-1-2011	Amend	1-1-2011
471-031-0230	12-13-2010	Repeal	1-1-2011	603-011-0250	1-7-2011	Amend	2-1-2011
471-031-0235	12-13-2010	Adopt	1-1-2011	603-011-0255	1-6-2011	Amend	2-1-2011
573-001-0075	12-8-2010	Amend	1-1-2011	603-011-0256	1-7-2011	Amend	2-1-2011
575-080-0100	11-16-2010	Adopt	1-1-2011	603-011-0263	1-6-2011	Amend	2-1-2011
575-080-0110	11-16-2010	Adopt	1-1-2011	603-011-0264	1-6-2011	Amend	2-1-2011
575-080-0120	11-16-2010	Adopt	1-1-2011	603-011-0281	1-7-2011	Amend	2-1-2011
575-080-0130	11-16-2010	Adopt	1-1-2011	603-011-0340	1-6-2011	Amend	2-1-2011
575-080-0135	11-16-2010	Adopt	1-1-2011	603-011-0365	1-6-2011	Repeal	2-1-2011
575-080-0140	11-16-2010	Adopt	1-1-2011	603-052-0347	11-23-2010	Amend	1-1-2011
575-080-0145	11-16-2010	Adopt	1-1-2011	603-052-1230	12-17-2010	Amend	2-1-2011
581-020-0350	12-17-2010	Repeal	2-1-2011	603-052-1250	12-17-2010	Amend	2-1-2011
581-022-0617	12-17-2010	Adopt	2-1-2011	629-001-0015	1-7-2011	Amend(T)	2-1-2011
581-045-0009	1-1-2011	Amend	2-1-2011	629-001-0020	1-7-2011	Amend(T)	2-1-2011
583-030-0010	11-16-2010	Amend	1-1-2011	629-041-0035	1-7-2011	Amend(T)	2-1-2011
583-030-0035	11-16-2010	Amend	1-1-2011	635-004-0018	1-1-2011	Amend	1-1-2011
583-050-0011	11-16-2010	Amend	1-1-2011	635-004-0019	12-7-2010	Amend(T)	1-1-2011
583-050-0016	11-16-2010	Amend	1-1-2011	635-004-0019	1-1-2011	Amend	1-1-2011
584-010-0090	1-1-2011	Amend	2-1-2011	635-004-0019	1-1-2011	Amend(T)	2-1-2011
584-017-0200	1-1-2011	Amend	2-1-2011	635-004-0019	1-11-2011	Amend(T)	2-1-2011
584-017-0201	1-1-2011	Amend	2-1-2011	635-004-0019(T)	12-7-2010	Suspend	1-1-2011
584-017-0300	1-1-2011	Amend	2-1-2011	635-004-0019(T)	1-1-2011	Suspend	2-1-2011
584-017-0390	1-1-2011	Amend	2-1-2011	635-004-0019(T)	1-11-2011	Suspend	2-1-2011
584-017-0480	1-1-2011	Amend	2-1-2011	635-004-0025	1-1-2011	Amend	1-1-2011
584-021-0165	1-1-2011	Amend	1-1-2011	635-004-0035	1-1-2011	Amend	1-1-2011
584-023-0005	1-1-2011	Amend	1-1-2011	635-004-0070	1-1-2011	Amend	1-1-2011
584-036-0055	1-1-2011	Amend	1-1-2011	635-004-0075	1-1-2011	Amend	1-1-2011
584-042-0002	1-1-2011	Repeal	2-1-2011	635-005-0045	12-10-2010	Amend(T)	1-1-2011
584-042-0006	1-1-2011	Repeal	2-1-2011	635-005-0190	1-1-2011	Amend	1-1-2011
584-042-0009	1-1-2011	Repeal	2-1-2011	635-006-0215	1-1-2011	Amend	1-1-2011
584-042-0044	1-1-2011	Amend	1-1-2011	635-006-0232	1-10-2011	Amend	2-1-2011
584-048-0065	1-1-2011	Am. & Ren.	2-1-2011	635-006-1075	11-23-2010	Amend(T)	1-1-2011
584-060-0162	1-1-2011	Amend	1-1-2011	635-006-1095	12-15-2010	Amend(T)	1-1-2011
584-060-0171	1-1-2011	Amend	1-1-2011	635-007-0545	12-6-2010	Amend	1-1-2011
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584-060-0182	1-1-2011	Amend	1-1-2011	635-007-0830	12-6-2010	Repeal	1-1-2011
584-060-0190	1-1-2011	Amend	1-1-2011	635-008-0055	1-1-2011	Amend	2-1-2011
584-060-0200	1-1-2011	Amend	1-1-2011	635-008-0148	1-14-2011	Amend	2-1-2011
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584-060-0220	1-1-2011	Amend	2-1-2011	635-008-0151	1-14-2011	Amend	2-1-2011
584-070-0001	1-1-2011	Amend	1-1-2011	635-008-0153	1-1-2011	Amend	2-1-2011
584-070-0111	1-1-2011	Amend	1-1-2011	635-010-0157	1-1-2011	Amend	2-1-2011
584-070-0112	1-1-2011	Amend	1-1-2011	635-011-0100	1-1-2011	Amend	2-1-2011
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584-070-0205	1-1-2011	Adopt	2-1-2011	635-013-0004	1-1-2011	Amend	2-1-2011
584-070-0211	1-1-2011	Amend	2-1-2011	635-014-0080	1-1-2011	Amend	2-1-2011
584-070-0221	1-1-2011	Amend	2-1-2011	635-014-0090	1-1-2011	Amend	2-1-2011
584-070-0271	1-1-2011	Amend	2-1-2011	635-016-0080	1-1-2011	Amend	2-1-2011
584-070-0310	1-1-2011	Amend	1-1-2011	635-016-0090	1-1-2011	Amend	2-1-2011
584-070-0401	1-1-2011	Adopt	2-1-2011	635-017-0080	1-1-2011	Amend	2-1-2011



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635-017-0095	1-1-2011	Amend	2-1-2011	660-001-0210	12-8-2010	Amend	1-1-2011
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635-018-0080	1-1-2011	Amend	2-1-2011	660-001-0230	12-8-2010	Amend	1-1-2011
635-018-0090	1-1-2011	Amend	2-1-2011	660-003-0005	12-8-2010	Amend	1-1-2011
635-018-0090	1-1-2011	Amend(T)	2-1-2011	660-003-0010	12-8-2010	Amend	1-1-2011
635-019-0080	1-1-2011	Amend	2-1-2011	660-003-0015	12-8-2010	Amend	1-1-2011
635-019-0090	1-1-2011	Amend	2-1-2011	660-003-0020	12-8-2010	Amend	1-1-2011
635-021-0080	1-1-2011	Amend	2-1-2011	660-003-0025	12-8-2010	Amend	1-1-2011
635-021-0090	1-1-2011	Amend	2-1-2011	660-003-0032	12-8-2010	Amend	1-1-2011
635-023-0080	1-1-2011	Amend	2-1-2011	660-003-0033	12-8-2010	Amend	1-1-2011
635-023-0090	1-1-2011	Amend	2-1-2011	660-003-0050	12-8-2010	Amend	1-1-2011
635-023-0095	1-1-2011	Amend	2-1-2011	660-033-0130	11-23-2010	Amend	1-1-2011
635-023-0095	1-1-2011	Amend(T)	2-1-2011	660-033-0130(T)	11-23-2010	Repeal	1-1-2011
635-023-0125	1-1-2011	Amend	2-1-2011	678-030-0027	11-19-2010	Amend	1-1-2011
635-023-0128	1-1-2011	Amend	2-1-2011	690-095-0005	12-14-2010	Adopt	1-1-2011
635-023-0130	1-1-2011	Amend	2-1-2011	690-095-0010	12-14-2010	Adopt	1-1-2011
635-023-0134	1-1-2011	Amend	2-1-2011	690-095-0015	12-14-2010	Adopt	1-1-2011
635-039-0080	1-1-2011	Amend	1-1-2011	690-095-0020	12-14-2010	Adopt	1-1-2011
635-039-0090	1-1-2011	Amend	1-1-2011	690-095-0025	12-14-2010	Adopt	1-1-2011
635-042-0130	12-1-2010	Amend(T)	1-1-2011	690-095-0030	12-14-2010	Adopt	1-1-2011
635-042-0135	1-15-2011	Amend(T)	2-1-2011	690-095-0035	12-14-2010	Adopt	1-1-2011
635-045-0002	1-1-2011	Amend	2-1-2011	690-095-0040	12-14-2010	Adopt	1-1-2011
635-049-0025	1-1-2011	Amend(T)	2-1-2011	690-095-0045	12-14-2010	Adopt	1-1-2011
635-049-0265	1-1-2011	Amend(T)	2-1-2011	690-095-0050	12-14-2010	Adopt	1-1-2011
635-055-0000	1-14-2011	Amend	2-1-2011	690-095-0055	12-14-2010	Adopt	1-1-2011
635-055-0030	1-14-2011	Amend	2-1-2011	690-095-0060	12-14-2010	Adopt	1-1-2011
635-055-0035	1-14-2011	Amend	2-1-2011	690-095-0065	12-14-2010	Adopt	1-1-2011
635-055-0037	1-14-2011	Amend	2-1-2011	690-095-0070	12-14-2010	Adopt	1-1-2011
635-060-0023	1-1-2011	Amend	2-1-2011	690-095-0075	12-14-2010	Adopt	1-1-2011
635-060-0030	1-1-2011	Amend	2-1-2011	690-095-0080	12-14-2010	Adopt	1-1-2011
635-060-0055	1-1-2011	Amend	2-1-2011	690-095-0085	12-14-2010	Adopt	1-1-2011
635-065-0001	1-1-2011	Amend	2-1-2011	690-095-0090	12-14-2010	Adopt	1-1-2011
635-065-0015	1-1-2011	Amend	2-1-2011	690-095-0095	12-14-2010	Adopt	1-1-2011
635-065-0090	1-1-2011	Amend	2-1-2011	690-095-0100	12-14-2010	Adopt	1-1-2011
635-065-0401	1-1-2011	Amend	2-1-2011	731-017-0005	12-22-2010	Adopt	2-1-2011
635-065-0625	1-1-2011	Amend	2-1-2011	731-017-0010	12-22-2010	Adopt	2-1-2011
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635-067-0000	1-1-2011	Amend	2-1-2011	731-017-0040	12-22-2010	Adopt	2-1-2011
635-072-0000	1-1-2011	Amend	2-1-2011	731-017-0045	12-22-2010	Adopt	2-1-2011
635-073-0076	1-1-2011	Amend	2-1-2011	731-017-0050	12-22-2010	Adopt	2-1-2011
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635-075-0010	1-1-2011	Amend	2-1-2011	731-035-0070	12-22-2010	Amend	2-1-2011
635-080-0016	1-1-2011	Amend	2-1-2011	735-032-0065	12-22-2010	Adopt	2-1-2011
635-080-0021	1-1-2011	Amend	2-1-2011	735-046-0050	1-1-2011	Amend	2-1-2011
635-080-0023	1-1-2011	Amend	2-1-2011	735-060-0000	1-1-2011	Amend	1-1-2011
635-080-0026	1-1-2011	Amend	2-1-2011	735-060-0120	1-1-2011	Amend	1-1-2011
635-170-0015	12-29-2010	Amend(T)	2-1-2011	735-062-0002	1-1-2011	Amend	1-1-2011
644-010-0010	1-1-2011	Amend(T)	1-1-2011	735-062-0070	1-1-2011	Amend	1-1-2011
660-001-0000	12-8-2010	Amend	1-1-2011	735-062-0200	1-1-2011	Amend	1-1-2011
660-001-0005	12-8-2010	Amend	1-1-2011	735-090-0000	1-1-2011	Amend	2-1-2011
660-001-0007	12-8-2010	Amend	1-1-2011	735-090-0020	1-1-2011	Amend	2-1-2011

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735-090-0101	1-1-2011	Amend	2-1-2011	818-013-0001	2-1-2011	Amend	2-1-2011
735-150-0055	1-1-2011	Amend	2-1-2011	818-013-0001(T)	2-1-2011	Repeal	2-1-2011
735-176-0000	1-1-2011	Amend	1-1-2011	818-013-0005	2-1-2011	Amend	2-1-2011
735-176-0010	1-1-2011	Amend	1-1-2011	818-013-0005(T)	2-1-2011	Repeal	2-1-2011
735-176-0017	1-1-2011	Amend	1-1-2011	818-013-0010	2-1-2011	Amend	2-1-2011
735-176-0019	1-1-2011	Amend	1-1-2011	818-013-0010(T)	2-1-2011	Repeal	2-1-2011
735-176-0020	1-1-2011	Amend	1-1-2011	818-013-0015	2-1-2011	Amend	2-1-2011
735-176-0021	1-1-2011	Amend	1-1-2011	818-013-0015(T)	2-1-2011	Repeal	2-1-2011
735-176-0022	1-1-2011	Amend	1-1-2011	818-013-0020	2-1-2011	Amend	2-1-2011
735-176-0023	1-1-2011	Adopt	1-1-2011	818-013-0020(T)	2-1-2011	Repeal	2-1-2011
735-176-0030	1-1-2011	Amend	1-1-2011	818-013-0025	2-1-2011	Amend	2-1-2011
735-176-0040	1-1-2011	Amend	1-1-2011	818-013-0025(T)	2-1-2011	Repeal	2-1-2011
735-176-0045	1-1-2011	Amend	1-1-2011	818-013-0030	2-1-2011	Amend	2-1-2011
741-125-0010	12-22-2010	Repeal	2-1-2011	818-013-0030(T)	2-1-2011	Repeal	2-1-2011
801-001-0035	1-1-2011	Amend	1-1-2011	818-013-0035	2-1-2011	Amend	2-1-2011
801-005-0010	1-1-2011	Amend	1-1-2011	818-013-0035(T)	2-1-2011	Repeal	2-1-2011
801-010-0010	1-1-2011	Amend	1-1-2011	820-010-0209	1-14-2011	Amend	2-1-2011
801-010-0050	1-1-2011	Amend	1-1-2011	820-010-0210	1-14-2011	Amend	2-1-2011
801-010-0060	1-1-2011	Amend	1-1-2011	820-010-0212	1-14-2011	Amend	2-1-2011
801-010-0065	1-1-2011	Amend	1-1-2011	820-010-0213	1-14-2011	Amend	2-1-2011
801-010-0073	1-1-2011	Amend	1-1-2011	820-010-0214	1-14-2011	Amend	2-1-2011
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801-010-0078	1-1-2011	Amend	1-1-2011	820-010-0215	1-14-2011	Amend	2-1-2011
801-010-0079	1-1-2011	Amend	1-1-2011	820-010-0215(T)	1-14-2011	Repeal	2-1-2011
801-010-0080	1-1-2011	Amend	1-1-2011	820-010-0305	1-14-2011	Amend	2-1-2011
801-010-0100	1-1-2011	Amend	1-1-2011	820-010-0400	1-14-2011	Amend	2-1-2011
801-010-0110	1-1-2011	Amend	1-1-2011	820-010-0417	1-14-2011	Amend	2-1-2011
801-010-0115	1-1-2011	Amend	1-1-2011	820-010-0427	1-14-2011	Amend	2-1-2011
801-010-0120	1-1-2011	Amend	1-1-2011	820-010-0435	1-14-2011	Repeal	2-1-2011
801-010-0125	1-1-2011	Amend	1-1-2011	820-010-0463	1-14-2011	Amend	2-1-2011
801-010-0130	1-1-2011	Amend	1-1-2011	820-010-0505	1-14-2011	Amend	2-1-2011
801-010-0170	1-1-2011	Amend	1-1-2011	820-010-0520	1-14-2011	Amend	2-1-2011
801-010-0190	1-1-2011	Amend	1-1-2011	833-020-0011	2-1-2011	Amend	2-1-2011
801-010-0340	1-1-2011	Amend	1-1-2011	833-020-0051	2-1-2011	Amend	2-1-2011
801-010-0345	1-1-2011	Amend	1-1-2011	833-020-0081	1-1-2011	Amend	1-1-2011
801-040-0010	1-1-2011	Amend	1-1-2011	833-040-0021	1-1-2011	Amend	1-1-2011
801-040-0050	1-1-2011	Amend	1-1-2011	833-050-0081	1-1-2011	Amend	1-1-2011
806-010-0105	12-14-2010	Amend	1-1-2011	833-055-0001	1-1-2011	Repeal	1-1-2011
812-001-0200	12-1-2010	Amend(T)	1-1-2011	833-055-0010	1-1-2011	Repeal	1-1-2011
812-002-0320	1-1-2011	Amend	2-1-2011	833-055-0020	1-1-2011	Repeal	1-1-2011
812-002-0677	1-1-2011	Adopt	2-1-2011	833-060-0012	1-1-2011	Amend	1-1-2011
812-007-0323	12-22-2010	Adopt(T)	2-1-2011	833-060-0062	1-1-2011	Adopt	1-1-2011
812-008-0074	1-1-2011	Amend	2-1-2011	833-100-0021	1-1-2011	Amend	1-1-2011
812-020-0090	1-1-2011	Amend	2-1-2011	833-110-0021	1-1-2011	Amend	1-1-2011
812-025-0000	1-1-2011	Adopt	2-1-2011	833-130-0080	1-1-2011	Adopt	1-1-2011
812-025-0005	1-1-2011	Adopt	2-1-2011	836-009-0007	1-1-2011	Amend	2-1-2011
812-025-0010	1-1-2011	Adopt	2-1-2011	836-011-0000	1-1-2011	Amend	2-1-2011
812-025-0015	1-1-2011	Adopt	2-1-2011	836-011-0515	12-15-2010	Amend	1-1-2011
812-025-0020	1-1-2011	Adopt	2-1-2011	836-071-0110	1-1-2011	Amend	2-1-2011
812-025-0025	1-1-2011	Adopt	2-1-2011	836-071-0118	1-1-2011	Adopt	2-1-2011
812-025-0030	1-1-2011	Adopt	2-1-2011	836-071-0120	1-1-2011	Amend	2-1-2011
812-025-0035	1-1-2011	Adopt	2-1-2011	836-080-0800	3-1-2011	Adopt	2-1-2011
812-025-0040	1-1-2011	Adopt	2-1-2011	836-080-0805	3-1-2011	Adopt	2-1-2011
812-025-0045	1-1-2011	Adopt	2-1-2011	836-080-0810	3-1-2011	Adopt	2-1-2011
813-001-0060	12-1-2010	Adopt(T)	1-1-2011	837-012-0315	1-1-2011	Amend(T)	2-1-2011

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837-012-0330	1-1-2011	Amend(T)	2-1-2011	851-070-0010(T)	12-2-2010	Repeal	1-1-2011
837-041-0050	12-1-2010	Amend	1-1-2011	851-070-0020	12-2-2010	Adopt	1-1-2011
837-047-0100	12-28-2010	Adopt	1-1-2011	851-070-0020(T)	12-2-2010	Repeal	1-1-2011
837-047-0110	12-28-2010	Adopt	1-1-2011	851-070-0030	12-2-2010	Adopt	1-1-2011
837-047-0120	12-28-2010	Adopt	1-1-2011	851-070-0030(T)	12-2-2010	Repeal	1-1-2011
837-047-0130	12-28-2010	Adopt	1-1-2011	851-070-0040	12-2-2010	Adopt	1-1-2011
837-047-0135	12-28-2010	Adopt	1-1-2011	851-070-0040(T)	12-2-2010	Repeal	1-1-2011
837-047-0140	12-28-2010	Adopt	1-1-2011	851-070-0050	12-2-2010	Adopt	1-1-2011
837-047-0150	12-28-2010	Adopt	1-1-2011	851-070-0050(T)	12-2-2010	Repeal	1-1-2011
837-047-0160	12-28-2010	Adopt	1-1-2011	851-070-0060	12-2-2010	Adopt	1-1-2011
837-047-0170	12-28-2010	Adopt	1-1-2011	851-070-0060(T)	12-2-2010	Repeal	1-1-2011
839-001-0200	1-1-2011	Amend	2-1-2011	851-070-0070	12-2-2010	Adopt	1-1-2011
839-020-0027	1-1-2011	Amend	2-1-2011	851-070-0070(T)	12-2-2010	Repeal	1-1-2011
839-025-0004	1-1-2011	Amend	2-1-2011	851-070-0080	12-2-2010	Adopt	1-1-2011
839-025-0013	1-1-2011	Amend	2-1-2011	851-070-0080(T)	12-2-2010	Repeal	1-1-2011
839-025-0020	1-1-2011	Amend	2-1-2011	851-070-0090	12-2-2010	Adopt	1-1-2011
839-025-0035	1-1-2011	Amend	2-1-2011	851-070-0090(T)	12-2-2010	Repeal	1-1-2011
839-025-0060	1-1-2011	Amend	2-1-2011	851-070-0100	12-2-2010	Adopt	1-1-2011
839-025-0100	1-1-2011	Amend	2-1-2011	851-070-0100(T)	12-2-2010	Repeal	1-1-2011
839-025-0230	1-1-2011	Amend	2-1-2011	855-011-0005	12-23-2010	Adopt	2-1-2011
839-025-0700	1-1-2011	Amend	2-1-2011	855-011-0005(T)	12-23-2010	Repeal	2-1-2011
845-003-0670	1-1-2011	Amend	2-1-2011	855-011-0020	12-23-2010	Adopt	2-1-2011
845-005-0440	1-1-2011	Amend	2-1-2011	855-011-0020(T)	12-23-2010	Repeal	2-1-2011
845-006-0345	1-1-2011	Amend	2-1-2011	855-011-0030	12-23-2010	Adopt	2-1-2011
845-008-0050	1-1-2011	Adopt	2-1-2011	855-011-0030(T)	12-23-2010	Repeal	2-1-2011
845-008-0070	1-1-2011	Adopt	2-1-2011	855-011-0040	12-23-2010	Adopt	2-1-2011
845-008-0080	1-1-2011	Adopt	2-1-2011	855-011-0040(T)	12-23-2010	Repeal	2-1-2011
845-008-0090	1-1-2011	Adopt	2-1-2011	855-011-0050	12-23-2010	Adopt	2-1-2011
845-009-0010	1-1-2011	Amend	2-1-2011	855-011-0050(T)	12-23-2010	Repeal	2-1-2011
845-010-0146	11-20-2010	Adopt(T)	1-1-2011	855-021-0010	12-23-2010	Amend	2-1-2011
845-010-0154	1-1-2011	Am. & Ren.	2-1-2011	855-041-0065	12-23-2010	Amend	2-1-2011
845-013-0070	12-3-2010	Amend(T)	1-1-2011	856-010-0014	12-14-2010	Amend	1-1-2011
845-015-0138	1-1-2011	Adopt	2-1-2011	860-027-0050	12-20-2010	Amend	2-1-2011
850-060-0212	12-13-2010	Amend	1-1-2011	860-027-0175	12-2-2010	Adopt	1-1-2011
850-060-0226	12-13-2010	Amend	1-1-2011	860-034-0393	12-20-2010	Amend	2-1-2011
851-002-0010	11-29-2010	Amend	1-1-2011	860-034-0730	12-20-2010	Amend	2-1-2011
851-002-0040	11-29-2010	Amend	1-1-2011	860-084-0190	11-19-2010	Amend	1-1-2011
851-021-0005	11-29-2010	Amend	1-1-2011	863-014-0020	1-1-2011	Amend	1-1-2011
851-021-0010	11-29-2010	Amend	1-1-2011	863-025-0065	1-1-2011	Amend	1-1-2011
851-021-0045	11-29-2010	Amend	1-1-2011	863-025-0068	1-1-2011	Adopt	1-1-2011
851-021-0055	11-29-2010	Amend	1-1-2011	877-001-0006	1-1-2011	Adopt	1-1-2011
851-021-0065	11-29-2010	Amend	1-1-2011	877-001-0015	1-1-2011	Adopt	1-1-2011
851-021-0090	11-29-2010	Amend	1-1-2011	877-001-0020	1-1-2011	Adopt	1-1-2011
851-031-0045	11-29-2010	Amend	1-1-2011	877-001-0025	1-1-2011	Adopt	1-1-2011
851-031-0070	11-29-2010	Amend	1-1-2011	877-005-0101	1-1-2011	Adopt	1-1-2011
851-046-0000	12-2-2010	Repeal	1-1-2011	877-010-0005	1-1-2011	Amend	1-1-2011
851-046-0005	12-2-2010	Repeal	1-1-2011	877-010-0010	1-1-2011	Amend	1-1-2011
851-046-0010	12-2-2010	Repeal	1-1-2011	877-010-0015	1-1-2011	Amend	1-1-2011
851-046-0020	12-2-2010	Repeal	1-1-2011	877-010-0020	1-1-2011	Amend	1-1-2011
851-046-0030	12-2-2010	Repeal	1-1-2011	877-010-0025	1-1-2011	Amend	1-1-2011
851-046-0040	12-2-2010	Repeal	1-1-2011	877-010-0030	1-1-2011	Amend	1-1-2011
851-070-0000	12-2-2010	Adopt	1-1-2011	877-010-0040	1-1-2011	Amend	1-1-2011
851-070-0000(T)	12-2-2010	Repeal	1-1-2011	877-010-0045	1-1-2011	Amend	1-1-2011
851-070-0005	12-2-2010	Adopt	1-1-2011	877-015-0105	1-1-2011	Adopt	1-1-2011
851-070-0005(T)	12-2-2010	Repeal	1-1-2011	877-015-0108	1-1-2011	Adopt	1-1-2011
851-070-0010	12-2-2010	Adopt	1-1-2011	877-015-0131	1-1-2011	Adopt	1-1-2011



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877-015-0146	1-1-2011	Adopt	1-1-2011	877-030-0040	1-1-2011	Amend	1-1-2011
877-015-0155	1-1-2011	Adopt	1-1-2011	877-030-0050	1-1-2011	Repeal	1-1-2011
877-020-0000	1-1-2011	Amend	1-1-2011	877-030-0070	1-1-2011	Amend	1-1-2011
877-020-0005	1-1-2011	Amend	1-1-2011	877-030-0080	1-1-2011	Amend	1-1-2011
877-020-0008	1-1-2011	Amend	1-1-2011	877-030-0090	1-1-2011	Amend	1-1-2011
877-020-0009	1-1-2011	Amend	1-1-2011	877-030-0100	1-1-2011	Amend	1-1-2011
877-020-0010	1-1-2011	Amend	1-1-2011	877-035-0000	1-1-2011	Repeal	1-1-2011
877-020-0015	1-1-2011	Repeal	1-1-2011	877-035-0010	1-1-2011	Repeal	1-1-2011
877-020-0016	1-1-2011	Amend	1-1-2011	877-035-0012	1-1-2011	Repeal	1-1-2011
877-020-0020	1-1-2011	Repeal	1-1-2011	877-035-0013	1-1-2011	Repeal	1-1-2011
877-020-0030	1-1-2011	Repeal	1-1-2011	877-035-0015	1-1-2011	Repeal	1-1-2011
877-020-0046	1-1-2011	Amend	1-1-2011	877-040-0000	1-1-2011	Amend	1-1-2011
877-020-0055	1-1-2011	Amend	1-1-2011	877-040-0003	1-1-2011	Amend	1-1-2011
877-020-0057	1-1-2011	Amend	1-1-2011	877-040-0010	1-1-2011	Amend	1-1-2011
877-020-0060	1-1-2011	Amend	1-1-2011	877-040-0019	1-1-2011	Adopt	1-1-2011
877-022-0005	1-1-2011	Amend	1-1-2011	877-040-0050	1-1-2011	Amend	1-1-2011
877-025-0001	1-1-2011	Amend	1-1-2011	918-400-0645	12-1-2010	Adopt	1-1-2011
877-025-0006	1-1-2011	Amend	1-1-2011	918-400-0660	12-1-2010	Amend	1-1-2011
877-025-0011	1-1-2011	Amend	1-1-2011	918-400-0755	1-1-2011	Adopt	2-1-2011
877-025-0016	1-1-2011	Amend	1-1-2011	918-400-0800	12-1-2010	Amend	1-1-2011
877-025-0021	1-1-2011	Amend	1-1-2011	918-460-0015	1-1-2011	Amend	2-1-2011
877-030-0025	1-1-2011	Amend	1-1-2011	918-480-0010	1-1-2011	Amend	2-1-2011