

OREGON BULLETIN

Supplements the 2011 *Oregon Administrative Rules Compilation*

Volume 50, No. 5
May 1, 2011

For March 16, 2011–April 15, 2011



Published by
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 TO COMMENT PROPOSED NO FURTHER ACTION BAIR LOGGING COMPANY (FORMER) VERNONIA, OREGON

COMMENT DUE: May 31, 2011

PROJECT LOCATION: Maple St. and Weed Ave., Vernonia

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 Bair Logging Company site, a 1.5 acre property encompassing a city block located southwest of the intersection of Maple St and Weed Ave in Vernonia, Oregon. The site is also proposed for delisting from the Confirmed Release List.

The Voluntary Cleanup Program has reviewed assessment and cleanup activities performed at the site. The site has been developed since at least 1928. Historic uses include a logging company, temporary storage of flood debris, and temporary housing for flood victims in 2008. The site is currently being redeveloped.

Contamination issues at the site included impacts from releases at a bulk plant located north of the site, possible elevated levels of arsenic in soil, and impacts from an old railroad spur. Based on the results of the assessments performed to evaluate these issues, 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 1787.

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

HOW TO COMMENT: The public comment period will end on May 31, 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 REMEDIAL ACTION FOR THE TIGARD LIBRARY SITE

COMMENTS DUE: May 31, 5:00 PM

PROJECT LOCATION: 13500 SW Hall Boulevard, Tigard, OR
PROPOSAL: As required by ORS 465.200, the Department of Environmental Quality (DEQ) invites public comment on its proposed remedy for the site.

HIGHLIGHTS: Early site investigations found elevated levels of arsenic in surface and near-surface soils. This area of Tigard was historically used for orchards, and arsenic-based chemicals were typically used as pesticides and fungicides. Data collected shows that soil erosion from upslope areas has transported soil contaminated with arsenic from the southwest portion of the site to lower elevation areas. Soils with elevated concentrations of arsenic are mostly present beneath the library building and the Pinebrook Stream corridor along the southern side of the property, and in the original farm pond that is now used for stormwater detention.

Investigations conducted between 2002 and 2008 identified three general areas on the Tigard library property where soil samples contained arsenic above DEQ risk-based screening levels: the North

Field; the Parking and Pine Tree Area; and the Wetland/Wild Area. Based on human health and ecological risk evaluations, these areas were found have arsenic concentrations that exceed one or more of the applicable Risk Based Concentrations (RBCs) for human exposure. Ecological screening values were also exceeded in some site areas.

The selected remedies for areas of elevated arsenic involve preventing exposure through a combination of capping, fencing, and cover vegetation. The Pine Tree and Parking lot area will be covered with a geotextile fabric and a 6-inch layer of mulch. Access to the Wetland/Wild area and North Field areas will be restricted by installing fencing, and maintaining vegetation cover to discourage use. If funding becomes available, the City of Tigard may excavate contaminated soil in the North Field Area, replace it with a minimum of 6 inches of clean fill, and re-sod with grass. The covering of the North Field Area with a minimum of 6 inches of fill will be protective for public use, and allow the City of Tigard to remove the fencing in the North Field Area. These engineering controls will be memorialized in a deed restriction recorded with the property deed, requiring that fences and mulch covers are regularly inspected and maintained. If additional soil is removed from the site, a Contaminated Media Management Plan (CMMP) shall be submitted to DEQ for approval. The CMMP will outline procedures for the safe excavation, management, and disposal of any arsenic-contaminated soil generated at the site.

DEQ welcomes the public's comments on the proposed remedial actions.

HOW TO COMMENT: To review project records, contact Dawn Weinberger at (503) 229-5425 and ask for records for Environmental Cleanup Site Information (ECSI) site #4063. The DEQ Project Manager is Shawn Rapp (503-229-5614). Written comments should be sent to Shawn Rapp at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 and must be received no later than 5 pm on May 31, 2011. A public meeting will be held to receive verbal comments if requested by 10 or more people, or by a group with a membership of 10 or more. Site information can also be found in DEQ's on-line ECSI database at: <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>, by searching on Site ID #4063.

THE NEXT STEP: DEQ will consider all comments received and make a final decision after consideration of these comments.

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

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

OPPORTUNITY TO COMMENT PROPOSED CONDITIONAL NO FURTHER ACTION CHEMTURA ASPHALT PLANT KLAMATH FALLS, OREGON

COMMENT DUE: May 31, 2011

PROJECT LOCATION: 2936 Hilyard Avenue, Klamath Falls

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 the Chemtura Asphalt Plant located at 2936 Hilyard Avenue in Klamath Falls, Oregon. The 7.4 acre asphalt plant produces, stores, and distributes emulsified asphalts and dust binders in addition to storage and distribution of asphalt paving materials and road oils.

The Voluntary Cleanup Program has reviewed site assessment and remedial activities performed at the site. Groundwater on and off-site has been impacted by solvents including trichloroethene (TCE) and vinyl chloride. The site is proposed for a risk-based closure and issuance of a Conditional No Further Action determination. All of the potential exposure concerns were addressed during the development

OTHER NOTICES

of the site-specific conceptual site model or will be addressed through the preparation of a Contaminated Media Management Plan and through institutional controls in the form of Easement and Equitable Servitudes (E&ES). The E&ES will prohibit beneficial use of shallow groundwater and require a 40 foot well seal for any wells installed at the properties to access deeper groundwater.

Additional information concerning site-specific investigations and remedial actions is available through DEQ's Environmental Cleanup Site Information (ECSI) database located at <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 1751.

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

HOW TO COMMENT: The public comment period will extend from May 1 to May 31, 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 ANALYSIS OF BROWNFIELD CLEANUP ALTERNATIVES INDEPENDENT ORDER OF ODD FELLOWS & STATE THEATER, LA GRANDE, OREGON

COMMENT DUE: May 31, 2011

PROJECT LOCATION: La Grande, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is providing notice for a public opportunity to review and comment on the Analysis of Brownfield Cleanup Alternatives (ABCA) for the

Independent Order of Odd Fellows (Odd Fellows) and State Theater located at 1106 Adams in La Grande, Oregon. The ABCA details the analysis and selection of protective cleanup options designed to address contamination at the site.

The property consists of two buildings built in 1900 and 1910 that are currently vacant. The buildings are connected and have been jointly used. The buildings have been neglected for decades. Asbestos Containing Material (ACM) has been identified as the primary contaminant in the buildings that must be addressed before any renovation of the site. Lead-based paint (LBP) is also likely present. The interior of the building has water damage, which has led to a mold and mildew problem and the upper levels of the structure have been infested with pigeons.

The ABCA selected the abatement of all ACM, LBP and miscellaneous hazardous substances as the preferred remedial alternative. The removal of wet construction material and the bird droppings will be required to properly access the ACM for abatement purposes.

The ABCA, as well as more 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 5493.

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

HOW TO COMMENT: The public comment period will extend from May 1 to 31, 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 finalizing the selected remedial action for the site. DEQ will provide written responses to all received public comments.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

.....
Board of Chiropractic Examiners
Chapter 811

Rule Caption: Establishes minimum educational and other requirements for dry needling.

Date:	Time:	Location:
5-17-11	1:30 p.m.	OBCE Offices 3218 Pringle Rd. SE, Suite 150 Salem, OR 97302

Hearing Officer: Dave McTeague

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.155(b)

Proposed Adoptions: 811-015-0036

Last Date for Comment: 5-17-11, Close of Hearing

Summary: Establishes minimum educational and other requirements for dry needling.

The May 17, 2011 Administrative Rule Hearing date in this notice supersedes the previously announced hearing date of May 19, 2011 as published in the March 2011 Oregon Bulletin.

Rules Coordinator: Donna Dougan

Address: 3218 Pringle Rd. SE Suite 150, Salem, OR 97302

Telephone: (503) 373-1579

.....
Board of Geologist Examiners
Chapter 809

Rule Caption: Adoption of the Board's 2011-2013 Operating Budget.

Date:	Time:	Location:
5-19-11	9-10 a.m.	Conference Room A 707 13th St. SE, Suite 260 Salem, OR 97301

Hearing Officer: Christine Valentine

Stat. Auth.: ORS 182.462, 182.466 & 672.505-672.705

Stats. Implemented: ORS 182.462 & 672.615

Proposed Amendments: 809-010-0025

Last Date for Comment: 5-19-11

Summary: This Administrative Rule revision will adopt the 2011-2013 biennial budget of the Board with a spending limit of \$459,653. The Board deliberated on this budget during December 2010 and March 2011 Board meetings and approved the 2011-2013 budget on March 29, 2011. The Board is now presenting the budget for review by its registrants and other interested parties. Individuals may view a copy of the budget rule on the Board's web page or may request a copy of the budget by contacting the Board's administrative office.

Rules Coordinator: Christine Valentine

Address: Board of Geologist Examiners, 707 13th St. SE, Suite 260, Salem, OR 97301

Telephone: (503) 566-2837

.....

Rule Caption: Adopt Signature Requirements, Update Qualifications for Fundamentals Exam/Geologist-in-Training, Update Board Fees.

Stat. Auth.: ORS 182.451-182.472 & 672.505-672.705

Stats. Implemented: ORS 182.466, 672.525, 672.555, 672.585 & 672.605

Proposed Adoptions: 809-050-0005

Proposed Amendments: 809-010-0001, 809-030-0025

Last Date for Comment: 5-19-11

Summary: New proposed rule OAR 809-050-0005: Signature specifies procedures for signature of documents prepared by a registered geologist or registered engineering geologist. The rule also provides for electronic or digital signatures and sets specifications for the authorized use of such signatures on documents prepared by a registered geologist or registered engineering geologist.

Amended proposed rule OAR 809-030-0025: Qualifications for Geologist Fundamentals Examination and Certification as a Geologist-in-Training updates and clarifies the geology coursework requirements that must be addressed by an applicant for the geologist fundamentals examination. The rule also clarifies the need for documentation via official transcripts of the applicant.

Amended proposed rule OAR 809-010-0001: Fees updates the fee charged by the Board for the Practice Section of the national examination for geologist certification, reflecting a fee increase made by the national association providing standardized written examinations for determining qualifications of applicants seeking licensure as professional geologists. This proposed rule also proposes reinstatement of two fees that were removed inadvertently during a past rulemaking. The two fees are designed to cover administrative costs associated with maintenance of examination files for passing examinees who do not register in Oregon and for providing a detailed list of registrants above and beyond the version routinely available via the Board's website.

Rules Coordinator: Christine Valentine

Address: Board of Geologist Examiners, 707 13th St. SE, Suite 260, Salem, OR 97301

Telephone: (503) 566-2837

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Board of Nursing
Chapter 851

Rule Caption: Rules to clarify nurse prescriber authority related to off label, compounded, and grandfathered drugs.

Date:	Time:	Location:
6-23-11	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Pat Markesino, Board President

Stat. Auth.: ORS 678.385 & 678.390

Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380 & 678.390

Proposed Amendments: 851-056-0000, 851-056-0010, 851-056-0012, 851-056-0016

Last Date for Comment: 6-21-11, 5 p.m.

Summary: These rules cover the authority of the Clinical Nurse Specialist and Nurse Practitioner to prescribe and dispense drugs.

NOTICES OF PROPOSED RULEMAKING

These rule amendments clarify their ability to prescribe off label, compounded, and grandfathered drugs.

Rules Coordinator: Peggy A. Lightfoot

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

Telephone: (971) 673-0638

.....

Rule Caption: Rule amendments for Nursing Assistant, Medication Aide, and CNA2 training programs.

Date: 6-23-11 **Time:** 9 a.m. **Location:** 17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Pat Markesino, Board President

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Proposed Adoptions: 851-061-0075

Proposed Amendments: 851-061-0020, 851-061-0030, 851-061-0040, 851-061-0050, 851-061-0080, 851-061-0090, 851-061-0110, 851-061-0130

Last Date for Comment: 6-21-11, 5 p.m.

Summary: These rules cover the standards for training programs for Nursing Assistants (NA) and Medication Aides (MA). This rule amendment includes language to permit on-line training for CNA2s and Medication Aides, removes barriers in the director/instructor/preceptor qualifications for MA training programs, increases the classroom/lab hours for MA training programs, and adds student protection for NA and MA training programs.

Rules Coordinator: Peggy A. Lightfoot

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

Telephone: (971) 673-0638

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Board of Optometry Chapter 852

Rule Caption: Implementation of criminal records checks for new, renewing, reinstating, and reactivating licensees.

Date: 6-10-11 **Time:** 9 a.m. **Location:** 1900 Hines St. SE 2nd Floor Conference Rm. Salem, OR 97302

Hearing Officer: Robert Mans, OD, President

Stat. Auth.: ORS 182, 676 & 683

Stats. Implemented: ORS 683.140, 683.270, 676.175, 676.303, 181.534

Proposed Adoptions: 852-050-0025

Last Date for Comment: 6-10-11

Summary: 852-050-0025 – Implementation of criminal records checks for new, renewing, reinstating, and reactivating licensees.

Rules Coordinator: Kelly Paige

Address: Board of Optometry, PO Box 13967, Salem, OR 97309

Telephone: (503) 399-0662, ext. 23

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Rule Caption: Expand and revise definitions related to licensing, practice and regulation of optometry.

Date: 6-10-11 **Time:** 9 a.m. **Location:** 1900 Hines St. SE 2nd Floor Conference Rm. Salem, OR 97302

Hearing Officer: Robert Mans, OD, President

Stat. Auth.: ORS 182 & 683

Stats. Implemented: ORS 182.468, 182.466, 683.010 & 683.335

Proposed Amendments: 852-001-0002

Last Date for Comment: 6-10-11

Summary: 852-001-0002 – Expand and revise definitions related to licensing, practice and regulation of optometry.

Rules Coordinator: Kelly Paige

Address: Board of Optometry, PO Box 13967, Salem, OR 97309

Telephone: (503) 399-0662, ext. 23

Rule Caption: Proposes the 2011–2013 biennial budget for the operation of the Board.

Date: 6-10-11 **Time:** 9 a.m. **Location:** 1900 Hines St. SE 2nd Floor Conference Rm. Salem, OR 97302

Hearing Officer: Robert Mans, OD, President

Stat. Auth.: ORS 182 & 683

Stats. Implemented: ORS 182.462(1)(2)

Proposed Amendments: 852-005-0005

Last Date for Comment: 6-10-11

Summary: 852-005-0005 – Proposes the 2011–2013 biennial budget for the operation of the Board.

Rules Coordinator: Kelly Paige

Address: Board of Optometry, PO Box 13967, Salem, OR 97309

Telephone: (503) 399-0662, ext. 23

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Rule Caption: Reorganize and Revise Board Schedule of Fees.

Date: 6-10-11 **Time:** 9 a.m. **Location:** 1900 Hines St. SE 2nd Floor Conference Rm. Salem, OR 97302

Hearing Officer: Robert Mans, OD, President

Stat. Auth.: ORS 182, 683 & 431

Stats. Implemented: ORS 182.466, 431.972 & 683.270

Proposed Amendments: 852-010-0080

Last Date for Comment: 6-10-11

Summary: 852-010-0080 – Reorganize and revise Board Schedule of Fees.

Rules Coordinator: Kelly Paige

Address: Board of Optometry, PO Box 13967, Salem, OR 97309

Telephone: (503) 399-0662, ext. 23

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Rule Caption: Extension of compliance date for requirements for business entity organization.

Date: 6-10-11 **Time:** 9 a.m. **Location:** 1900 Hines St. SE 2nd Floor Conference Rm. Salem, OR 97302

Hearing Officer: Robert Mans, OD, President

Stat. Auth.: ORS 58, 63 & 683

Stats. Implemented: ORS 58.367, 63.074 & 683.270(11)

Proposed Amendments: 852-020-0045

Last Date for Comment: 6-10-11

Summary: 852-020-0045 – Extension of compliance date for requirements for business entity organization.

Rules Coordinator: Kelly Paige

Address: Board of Optometry, PO Box 13967, Salem, OR 97309

Telephone: (503) 399-0662, ext. 23

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Rule Caption: Eliminates requirement to purchase wall certificate; adds and amends language regarding display of license.

Date: 6-10-11 **Time:** 9 a.m. **Location:** 1900 Hines St. SE 2nd Floor Conference Rm. Salem, OR 97302

Hearing Officer: Robert Mans, OD, President

Stat. Auth.: ORS 182, 683 & 431

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466

Proposed Amendments: 852-050-0005

Last Date for Comment: 6-10-11

Summary: 852-050-0005 – Eliminates requirement to purchase wall certificate; adds and amends language regarding display of license.

Rules Coordinator: Kelly Paige

Address: Board of Optometry, PO Box 13967, Salem, OR 97309

Telephone: (503) 399-0662, ext. 23

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Amends language; clarifies manner of 30-day notice; delineates late Continuing Education fee.

Date: 6-10-11
Time: 9 a.m.
Location: 1900 Hines St. SE
2nd Floor Conference Rm.
Salem, OR 97302

Hearing Officer: Robert Mans, OD, President

Stat. Auth.: ORS 182, 431 & 683

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270, 182.466 & 431.972

Proposed Amendments: 852-050-0006

Last Date for Comment: 6-10-11

Summary: 852-050-0006 – Amends language; clarifies manner of 30-day notice; delineates late Continuing Education fee.

Rules Coordinator: Kelly Paige

Address: Board of Optometry, PO Box 13967, Salem, OR 97309

Telephone: (503) 399-0662, ext. 23

Rule Caption: Decrease late renewal fee for Inactive License renewal; amend other language

Date: 6-10-11
Time: 9 a.m.
Location: 1900 Hines St. SE
2nd Floor Conference Rm.
Salem, OR 97302

Hearing Officer: Robert Mans, OD, President

Stat. Auth.: ORS 182 & 683

Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466

Proposed Amendments: 852-050-0012

Last Date for Comment: 6-10-11

Summary: 852-050-0012 – Decrease late renewal fee for Inactive License renewal; amend other language.

Rules Coordinator: Kelly Paige

Address: Board of Optometry, PO Box 13967, Salem, OR 97309

Telephone: (503) 399-0662, ext. 23

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Amends division 36 to update procedures to comply with statutory changes relating to extended deferral.

Stat. Auth.: ORS 144.226 & 144.228

Stats. Implemented: ORS 144.096, 144.098, 144.101, 144.102, 144.106, 144.107, 144.108 & 144.346

Proposed Amendments: 255-036-0005, 255-036-0010, 255-036-0020, 255-036-0025, 255-036-0030

Last Date for Comment: 6-6-11

Summary: Division 36 establishes the procedures and rules that apply to Dangerous Offenders whose crimes occurred prior to November 1, 1989. Amendments are necessary to establish procedures that comply with changes to ORS 144.228(2009), relating to the authority of the Board to defer an inmate's parole consideration date for longer than two years (up to ten years). OAR 255-036-005(7) is amended to conform to the rule to the Board's statutory authority.

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 Psychologist Examiners Chapter 858

Rule Caption: Rule corrections and updates; requires licensees provide Board with address, phone, and name changes.

Stat. Auth.: ORS 675.010–675.150

Stats. Implemented: ORS 675.110(17)

Proposed Adoptions: 858-010-0061

Proposed Amendments: 858-010-0010, 858-010-0016, 858-010-0017, 858-010-0036, 858-010-0065, 858-020-0085

Last Date for Comment: 5-22-11, Close of Business

Summary: Adds requirement that licensees notify the Board in writing within 30 days of address, phone, and name changes. Removes requirement that supervised work experience consist of at least 50% face-to-face client contact. Other minor housekeeping items.

Rules Coordinator: Debra Orman McHugh

Address: 3218 Pringle Road SE, Suite 130, Salem, OR 97302

Telephone: (503) 378-4154

Department of Agriculture Chapter 603

Rule Caption: Updating federal food safety laws adopted by Oregon.

Date: 5-16-11
Time: 1:30 p.m.
Location: 635 Capitol St. NE
Salem, OR 97301

Hearing Officer: Bybee

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Proposed Amendments: 603-024-0211

Last Date for Comment: 5-23-11

Summary: OAR 603-024-0211 adopts the Grade A Pasteurized Milk Ordinance (PMO), applicable to the Oregon Dairy Industry. Without adherence to the PMO, Oregon fluid milk and milk products could not enter interstate commerce.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

Rule Caption: Establishing criteria for exemptions to food establishment provisions.

Date: 5-16-11
Time: 1:30 p.m.
Location: 635 Capitol St. NE
Salem, OR 97301

Hearing Officer: Bybee

Stat. Auth.: ORS 651, 616 & 619

Stats. Implemented: ORS 616.700

Proposed Amendments: 603-025-0030

Last Date for Comment: 5-23-11

Summary: OAR 603-025-0030(2)(c) was meant to provide an exemption for establishments from food establishments requirements where the Department determines that public health principal would not be compromised. Currently, due to a scrivener's error, the rule provides for an exemption where public health principals *would be compromised*. The amendment corrects this error.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

Rule Caption: Updating federal food safety laws related to shellfish.

Date: 5-16-11
Time: 1:30 p.m.
Location: 635 Capitol St. NE
Salem, OR 97301

Hearing Officer: Bybee

Stat. Auth.: ORS 651.190 & 622.180

Stats. Implemented: OS 622.180

Proposed Amendments: 603-100-0010

Last Date for Comment: 5-23-11

Summary: OAR 603-100-0010 adopts the 2007 revision of the National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish (NSSP). The provisions of the NSSP govern growing area survey and classification, controlled relaying, patrol of harvest areas, control of harvesting, aquaculture, laboratory and administrative procedures. In addition, the rules cover the harvesting, handling and shipping of shellfish, wet storage, shucking and packing shellfish, shellfish shipping, heat shock, depuration and

NOTICES OF PROPOSED RULEMAKING

application of Hazardous Analysis Critical Control Point (HACCP). Without adherence to those provisions, shellfish raised and processed in Oregon would be prohibited from entering interstate commerce.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

Rule Caption: Requirements and limitations relating to the Interstate Certified Shellfish Shippers List.

Date:	Time:	Location:
5-16-11	1:30 p.m.	635 Capitol St. NE Salem, OR 97301

Hearing Officer: Bybee

Stat. Auth.: ORS 651.109 & 622.180

Stats. Implemented: ORS 622.180

Proposed Adoptions: 603-100-0050

Last Date for Comment: 5-23-11

Summary: OAR 603-100-0050 limits the distribution of shellfish from dealers not on the Interstate Certified Shellfish Shippers List to Oregon only.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

Rule Caption: Updating scientific names, corrects typos, add Sherman county to cherry fruit fly control area.

Stat. Auth.: ORS 561 & 570.405

Stats. Implemented: ORS 561.190, 570.305 & 570.405

Proposed Amendments: 603-052-0030, 603-052-0150, 603-052-0153, 603-052-0160, 603-052-0187, 603-052-0265

Last Date for Comment: 5-26-11

Summary: Housekeeping changes are proposed to update scientific names in the following areas: Wasco County Control Area Apple Maggot, San Jose Scale, and Codling Moth; Jackson County Control Area Pear, and Apple Insects; Josephine Control Area Apple Maggot; and Hood River County Control Area and Eradication of Insects and Diseases in Pear, Quince, Apple, Peach, and Apricot trees and Orchards. Corrects typos in plum curculio quarantine. Add Sherman County to Cherry Fruit Fly control area due to expansion of cherry industry into Sherman County. This change would facilitate marketing Sherman County cherries to California.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Adoption of Oregon Companion Guide for Health Care Eligibility Benefit Inquiry and Response.

Date:	Time:	Location:
5-25-11	1:30 p.m.*	Labor & Industries Bldg., Conference Room F 350 Winter St. NE Salem, OR

Hearing Officer: Jeannette Holman

Stat. Auth.: 2009 OL Ch. 595, Sec. 1192

Other Auth.: ORS 731.244

Stats. Implemented: 2009 OL Ch. 595, Sec. 1192 & 1193

Proposed Adoptions: 836-100-0100, 836-100-0105, 836-100-0110, 836-100-0115, 836-100-0120

Last Date for Comment: 6-15-11

Summary: *Note: The hearing will begin at 1:30 p.m. and end when all present who wish to testify have done so.

This rule will adopt the uniform standards for administrative simplification of health insurance developed by the Office of Oregon Health Policy and Research pursuant to the provisions of Section 1193, Chapter 595, Oregon Laws 2009. Section 1192, Chapter 595, Oregon Laws 2009 requires the Department of Consumer and Business Services to adopt these standards by rule.

NOTE: If Senate Bill 94 becomes law before the public hearing, the rules will be amended to encompass any changes necessary to reflect the provisions of SB 94. The alternate version of the proposed rules is available on the Insurance Division website.

Rules Coordinator: Sue Munson

Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301

Telephone: (503) 947-7272

Department of Corrections Chapter 291

Rule Caption: Research Proposals.

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

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

Proposed Adoptions: 291-035-0011

Proposed Amendments: 291-035-0005, 291-035-0010, 291-035-0015

Last Date for Comment: 6-22-11

Summary: Modification and adoption of these rules is necessary to establish procedures for submitting research proposals to the department and update the process that such proposals are reviewed and approved. These rules have not been modified since 1994; and the department is updating the rules to align with current practices.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Department of Fish and Wildlife Chapter 635

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

Date:	Time:	Location:
6-3-11	8 a.m.	Dept. of Fish & Wildlife 3406 Cherry Ave. NE Commission Rm. Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

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

Other Auth.: Magnusson-Stevens Sustainable Fisheries Act

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

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

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

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

Last Date for Comment: 6-3-11

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

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

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Marine Reserves: Change in Rules Effective Date for Otter Rock and Redfish Rocks.

Date: 6-3-11
Time: 8 a.m.
Location: Dept. of Fish & Wildlife
3406 Cherry Ave. NE
Commission Rm.
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 196.540–196.555, 496.162 & 506.129

Proposed Adoptions: Rules in 635-012

Proposed Amendments: Rules in 635-012

Proposed Repeals: Rules in 635-012

Last Date for Comment: 6-3-11

Summary: Change the rules effective date, from June 30, 2011 to January 1, 2012, for the marine reserve at Otter Rock and marine reserve and marine protected area at Redfish Rocks to provide for an additional full field season of baseline data collection.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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Rule Caption: Rules for Oregon's Upper Willamette River Conservation and Recovery Plan for Chinook Salmon and Steelhead.

Date: 6-3-11
Time: 8 a.m.
Location: Dept. of Fish & Wildlife
3406 Cherry Ave. NE
Commission Rm.
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Other Auth.: Native Fish Conservation Policy (OAR 635-007-0502 – 0509) & Federal Endangered Species Act

Stats. Implemented: ORS 496.138, 496.146 & 506.119

Proposed Adoptions: Rules in 635-500

Proposed Amendments: Rules in 635-500

Proposed Repeals: Rules in 635-500

Last Date for Comment: 6-3-11

Summary: Adopt or amend rules, as necessary, relating to the *Upper Willamette River Conservation and Recovery Plan for Chinook Salmon and Steelhead*.

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: 2012 annual changes to game mammal hunting regulations, plus 2011 controlled hunt tag numbers.

Date: 6-2-11
Time: 1 p.m.
Location: 3406 Cherry Ave. NE
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

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

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

Proposed Amendments: Rules in 635-002, 635-045, 635-049, 635-060, 635-065, 635-066, 635-067, 635-068, 635-069, 635-070, 635-071, 635-072, 635-073, 635-075, 635-078, 635-080

Last Date for Comment: 6-2-11

Summary: Establish 2011 controlled hunt tag numbers and/or season regulations for the hunting of pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer and elk.

Propose 2012 hunting regulations for game mammals, including season dates, bag limits, open areas, location of cooperative travel management areas, and controlled hunting regulations. Propose

quotas for 2012 cougar seasons and spring bear limited, first-come first-serve and controlled hunt tag numbers for 2012. These proposals will be presented in principle to the Oregon Fish and Wildlife Commission in June 2011 and again for adoption in October 2011.

Amend rules to allow fallow deer that leave Oregon temporarily for educational or display purposes to return to Oregon.

Amend Rules to clarify the decision standards for suspension and revocation from the LOP program.

Amend the rules that ban the importation of certain cervid parts from states that have confirmed the presence of Chronic Wasting Disease. This amendment includes but is not limited to Maryland.

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: Adoption of rules relating to the naming of the Tami Wagner Wildlife Area.

Date: 6-2-11
Time: 1 p.m.
Location: 3406 Cherry Ave. NE
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

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

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

Proposed Adoptions: 635-008-0163

Last Date for Comment: 6-2-11

Summary: Amend Rules to name property already owned by the Department the "Tami Wagner Wildlife Area."

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 rules relating to use of aircraft to hunt or locate game mammals or birds.

Date: 6-2-11
Time: 1 p.m.
Location: 3406 Cherry Ave. NE
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138 & 498.126

Stats. Implemented: ORS 496.012, 496.138 & 498.126

Proposed Amendments: Rules in 635-043

Last Date for Comment: 6-2-11

Summary: This rule implements ORS 498.126(4)(b), which requires definition of "emergency situation" and "necessary" in relation to use of aircraft by the Department or its agents in hunting or locating game mammals and game birds.

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 Rules Relating to Competitive Trials, Commercial and Individual Training for Hunting Dogs and Raptors.

Date: 6-2-11
Time: 1 p.m.
Location: 3406 Cherry Ave. NE
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 498.006 & 498.106

Stats. Implemented: ORS 496.012, 496.138, 496.146, 498.006 & 498.106

Proposed Amendments: Rules in 635-043, 635-046, 635-050

Last Date for Comment: 6-2-11

Summary: The purpose of this rule is to carry out the provisions of ORS 498.106 which relates to competitive field trials for hunting dogs and to provide the conditions under which wildlife may be used to train hunting dogs and raptors.

Rules Coordinator: Therese Kucera

NOTICES OF PROPOSED RULEMAKING

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

Telephone: (503) 947-6033

Rule Caption: Amend Rules Relating to Wildlife Rehabilitation permits.

Date:	Time:	Location:
6-2-11	1 p.m.	3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242

Proposed Amendments: Rules in 635-044, 635-056, 635-435

Last Date for Comment: 6-2-11

Summary: Review, update and amend rules relating to wildlife rehabilitation. Specific rule changes include but are not limited to: definition of terms; requirements and conditions; restricted species; department notification; disposition of wildlife; Federal Rehabilitation Permit; facility requirements; record keeping and reporting requirements; and cancellation or non renewal of permit.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
5-25-11	8:30 a.m.	500 Summer St. NE, Rm. 254 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005 & 419B.369

Stats. Implemented: ORS 418.005, 419B.192 & 419B.369

Proposed Adoptions: 413-070-0651, 413-070-0655, 413-070-0660, 413-070-0665, 413-070-0670

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

Summary: 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. Most of these rule changes make permanent rules adopted as temporary rules on December 29, 2010.

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

Written comments may be submitted until May 27, 2011 at 5:00 p.m. Written comments may be submitted via e-mail to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Children, Adults, and Fam-

ilies Division, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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

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

Date:	Time:	Location:
5-24-11	10 a.m.	500 Summer St. NE, Rm. 255 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.081, 411.083, 411.122, 411.404, 411.408, 411.431, 411.432, 411.660, 411.706, 411.816, 411.877, 411.892, 412.001, 412.006, 412.009, 412.014, 412.049, 412.124 & 414.231

Other Auth.: The Education Jobs and Medicaid Assistance Act of 2010 (Pub. Law 111-226); Oregon Medicaid/State Children's Health Insurance Program (SCHIP) Health Insurance Flexibility and Accountability (HIFA) Section 1115 Demonstration; American Recovery and Reinvestment Act of 2009 (Pub. Law 111-5); 42 USC. 1396d(p); 42 USC 1396p(f); Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Sec. 728 (Pub. Law 111-312); 20 CFR 416.2099; 42 CFR 435.610; 45 CFR 260.30, 260.31; ORS 291.261; 2010 Or. Laws ch. 95, 2009 Or. Laws ch. 732; Oregon Legislature Emergency Board Minutes, September 23, 2010 (available at: http://www.leg.state.or.us/comm/lfo/092310_minutes.pdf)

Stats. Implemented: ORS 183.415, 183.417, 409.010, 409.050, 409.610, 411.010, 411.060, 411.070, 411.081, 411.083, 411.117, 411.122, 411.141, 411.400, 411.404, 411.408, 411.431, 411.432, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.704, 411.706, 411.816, 411.877, 411.892, 412.001, 412.006, 412.009, 412.014, 412.049, 412.124, 414.025, 414.065, 414.231, 414.826, 414.831, 418.485 & 2009 OL Ch. 827

Proposed Adoptions: 461-155-0575

Proposed Amendments: 461-115-0530, 461-120-0315, 461-135-0400, 461-135-1120, 461-145-0140, 461-145-0220, 461-145-0530, 461-155-0150, 461-155-0180, 461-155-0290, 461-155-0291, 461-155-0295, 461-155-0528, 461-155-0693, 461-160-0800, 461-165-0160, 461-165-0171, 461-175-0200, 461-190-0416, 461-195-0501, 461-195-0521

Proposed Repeals: 461-115-0530(T), 461-135-0400(T), 461-135-1120(T), 461-145-0143, 461-145-0530(T), 461-155-0180(T), 461-155-0290(T), 461-155-0291(T), 461-155-0295(T), 461-155-0528(T), 461-155-0575(T), 461-155-0693(T), 461-190-0416(T)

Last Date for Comment: 5-26-11, 5 p.m.

Summary: OAR 461-115-0530 about Oregon Health Plan (OHP) program certification periods is being amended to lengthen Oregon Health Plan - Adults (OHP-OPU) program certification period (the period for which a client is certified eligible for a program). This rule also is being amended to make permanent the temporary changes adopted March 1, 2011.

OAR 461-120-0315 about the assignment of the right to reimbursement for health care costs for clients in the Department medical programs is being amended to state that a Program for All-Inclusive Care for the Elderly (PACE) client in a nursing facility who is receiving long-term care insurance payments may meet the requirement to assign rights for medical care reimbursements to the Depart-

NOTICES OF PROPOSED RULEMAKING

ment by assigning them to the long-term care facility or immediately turning them over to the long-term care facility if received directly.

OAR 461-135-0400 about the specific eligibility requirements for child care payments and the Employment Related Day Care (ERDC) program is being amended to remove the requirement that new applicants (and any ERDC program client with a break in ERDC benefits of more than 30 days) must have received benefits in the Refugee Assistance (REF), State Family Pre-SSI/SSDI (SFPSS), or Temporary Assistance to Needy Families (TANF) programs within at least one of the prior three months. In addition, this rule is being amended to remove provisions related to the Child Care Reservation List. This rule also is being amended to make permanent the temporary changes adopted March 22, 2011.

OAR 461-135-1120 about when an Oregon Health Plan - Adult (OHP-OPU) program benefit group (the individuals who receive benefits) must pay a monthly premium to receive program benefits is being amended to restate how the Department determines when a premium payment is paid on time or past due, and to state when a premium payment is in arrears. This rule also is being amended to cross-reference other administrative rules for the definitions of terms used in this rule and to italicize the defined terms throughout the rule. This rule also is being amended to make permanent the temporary changes adopted March 1, 2011.

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. This rule also is being amended to make permanent the temporary changes adopted January 1, 2011.

OAR 461-145-0143 about how the Department treats Making Work Pay and American Recovery and Reinvestment Act of 2009 (Pub. Law 111-5) economic recovery payments when determining a client's eligibility for Department program benefits is being repealed as the federal provisions authorizing these payments expired December 31, 2010. This rule also is being repealed to make permanent the temporary suspension adopted January 1, 2011.

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 services is being amended to revise the policy about when the equity value of the home is excluded from the client's assets. This rule also is being amended to make permanent the temporary changes adopted January 1, 2011.

OAR 461-145-0530 about how the Department treats tax refunds when determining a client's assets (income and resources) is being amended to restate how the Department treats federal income tax refunds in compliance with recent federal legislation Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Pub. Law 111-312). This rule also is being amended to make permanent the temporary changes adopted February 4, 2011.

OAR 461-155-0150 about the eligibility standards, payment rates, and copayments that apply to child care benefits under the Employment Related Day Care (ERDC), Job Opportunity and Basic Skills (JOBS), JOBS Plus, and Temporary Assistance for Needy Families (TANF) programs is being amended in response to an Oregon Legislature Emergency Board directive (September 23, 2010) to restate which child care providers the Department may pay at a part-time monthly rate. This rule also is being amended to state when the Department may pay more than one child care provider at a part-time monthly rate for the same child for the same month.

OAR 461-155-0180 about poverty-related income standards is being amended to reflect the annual increase in the federal poverty guidelines. This rule also is being amended to make permanent the temporary changes adopted January 20, 2011.

OAR 461-155-0290 about the income standards in the Qualified Medicare Beneficiaries - Basic (QMB-BAS) program, OAR 461-155-0291 about the income standards in the Qualified Medicare Beneficiaries - Disabled Worker (QMB-DW) program, and OAR 461-155-0295 about the income standards in the Qualified Medicare Beneficiaries - Specified Limited Medicare Beneficiary (QMB-SMB), and Qualified Medicare Beneficiaries - Qualified Individuals (QMB-SMF) programs are being amended to reflect the annual changes in the income standards based on changes to the federal poverty level. OAR 461-155-0295 also is being amended to clarify the income standards being applied. These rules also are being amended to make permanent the temporary changes adopted March 1, 2011.

OAR 461-155-0528 about emergency assistance in the Oregon Supplemental Income Program Medical (OSIPM) program is being amended to restate which OSIPM program clients receiving Supplemental Security Income (SSI) payments are eligible for emergency assistance payments. This rule also is being amended to increase the amount of the authorized maximum emergency assistance payment. This rule also is being amended to make permanent the temporary changes adopted February 1, 2011.

OAR 461-155-0575 is being adopted to set out the policy for providing special need in-home supplementary payments to certain Oregon Supplemental Income Program Medical (OSIPM) clients who receive specified in-home services. This rule also is being adopted to make permanent the temporary rule adopted April 1, 2011.

OAR 461-155-0693 about transportation services payments in the Oregon Supplemental Income Program Medical (OSIPM) program is being amended to increase the amount of the authorized maximum monthly payment. This rule also is being amended to make permanent the temporary changes adopted February 1, 2011.

OAR 461-160-0800 about how the Department calculates the participant fee for Oregon Supplemental Income Program - Employed Persons with Disabilities (OSIP-EPD) and Oregon Supplemental Income Program Medical - Employed Persons with Disabilities (OSIPM-EPD) program clients is being amended to restate the cross-referenced Oregon Administrative Rule used to determine the Federal Poverty Level (FPL) used in calculating the participant fees.

OAR 461-165-0160 about how the Department makes payments to child care providers is being amended in response to an Oregon Legislature Emergency Board directive (September 23, 2010) to indicate that in the Job Opportunity and Basic Skills (JOBS), JOBS Plus, and Temporary Assistance for Needy Families (TANF) programs (in addition to ERDC which the rule already covers) the Department will not authorize a child care provider payment unless the client has designated a primary provider.

OAR 461-165-0171 about the methods Employment Related Day Care (ERDC), Job Opportunity and Basic Skills (JOBS), and Temporary Assistance for Needy Families (TANF) program child care providers are required to follow to receive payments from the Department is being amended in response to an Oregon Legislature Emergency Board directive (September 23, 2010) to state the requirements the providers using the Department's Child Care Billing and Attendance Tracking system must meet to receive payments from the Department.

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 restate which type of decision notice is sent to a Supplemental Nutrition Assistance Program (SNAP) client.

OAR 461-190-0416 about how the Department determines eligibility for and calculates the amount of a Temporary Assistance for Needy Families (TANF) or Supplemental Nutrition Assistance Pro-

NOTICES OF PROPOSED RULEMAKING

gram (SNAP) program supplemental payment made to a client when the client's Job Opportunity and Basic Skills (JOBS) Plus income reduces the client's TANF or SNAP program benefits is being amended to restate how the Department determines a client's full benefit equivalency income and minimum benefit equivalency income (the income amounts used to determine eligibility for and the amount of the supplemental payment under this rule). This rule also is being amended in response to recently enacted federal legislation (The Education Jobs and Medicaid Assistance Act of 2010 (Pub. Law 111-226)) to state how, effective January 1, 2011, the Department determines eligibility for and calculates the amount of a supplemental payment under this rule. This rule also is being amended to make permanent the temporary changes adopted February 14, 2011.

OAR 461-195-0501 about how the Department defines and categorizes overpayments (benefits paid to a client in error, that the Department generally attempts to recover from the client) for programs administered under chapters 410, 411, and 461 of the Oregon Administrative Rules is being amended in response to an Oregon Legislature Emergency Board directive (September 23, 2010) to expand what constitutes a child care overpayment and a client error overpayment.

OAR 461-195-0521 about how the Department calculates the amount of a client or provider's overpayment liability is being amended to restate how the Department calculates the amount of Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), Oregon Supplemental Income Program - Employed Persons with Disabilities (OSIP-EPD), and Oregon Supplemental Income Program Medical - Employed Persons with Disabilities (OSIPM-EPD) program overpayments.

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

Written comments may be submitted until May 26, 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: Community Development Disability Programs.

Date:	Time:	Location:
5-16-11	1:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rms. 137CD Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 409.050, 410.070 & 430.640

Other Auth.: ORS 291.261

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

Proposed Amendments: 411-320-0030, 411-320-0045, 411-320-0130

Proposed Repeals: 411-320-0030(T), 411-320-0045(T), 411-320-0130(T), 411-320-170(T)

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

Summary: In response to legislatively required budget reductions to the Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) and community development disability programs (CDDPs), SPD is proposing to permanently amend various CDDP rules in OAR chapter 411, division 320 to:

- Eliminate the position requirements for Quality Assurance (QA) to reflect the reduction of the financial resources for this position; and

- Revise the site visit and monitoring of services requirements at DHS licensed and certified programs.

Rules Coordinator: Christina Hartman

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

Telephone: (503) 945-6398

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**Department of Justice
Chapter 137**

Rule Caption: Intergovernmental child support services, alternative support payments, child support guidelines self-support reserve amount.

Stat. Auth.: ORS 18.005, 18.225, 25.020, 25.080, 25.260, 25.275, 25.280, 25.396, 25.427, 25.625, 25.729, 180.345, 180.380 & 416.455

Stats. Implemented: ORS 18.180-18.194, 18.225-18.238, 18.400, 25.015-25.085, 25.167, 25.260, 25.275, 25.280, 25.287, 25.321-25.343, 25.372-25.427, 25.625, 25.729, 25.790, 82.010, 107.135, 110.303-110.452, 416.422-416.429, 656.234, 657.780 & 657.855

Proposed Amendments: 137-050-0745, 137-055-1020, 137-055-1090, 137-055-1120, 137-055-1145, 137-055-3220, 137-055-3240, 137-055-3400, 137-055-3420, 137-055-4040, 137-055-4060, 137-055-4080, 137-055-4455, 137-055-4540, 137-055-5060, 137-055-5080, 137-055-5220, 137-055-5240, 137-055-6023, 137-055-6120, 137-055-7020, 137-055-7040, 137-055-7060, 137-055-7100, 137-055-7120, 137-055-7140, 137-055-7160, 137-055-7180, 137-055-7190

Proposed Repeals: 137-055-4100, 137-055-4110, 137-055-4120, 137-055-4180, 137-055-5020, 137-055-7080

Last Date for Comment: 6-17-11, Close of Business

Summary: OAR 137-050-0745 is being amended to update the self-support reserve amount.

OAR 137-055-1020, 137-055-1090, 137-055-1120, 137-055-1145, 137-055-3220, 137-055-3240, 137-055-3400, 137-055-3420, 137-055-4040, 137-055-4455, 137-055-4540, 137-055-5080, 137-055-5220, 137-055-5240, 137-055-6120, and 137-055-7020 through 137-055-7190 are being amended (OAR 137-055-7080 is being repealed) to reflect changes in federal regulations concerning intergovernmental case processing. Additionally, language in existing rules is simplified for clarity.

OAR 137-055-4060 through 137-055-4120, 137-055-4180, 137-055-5020, 137-055-5060 and 137-055-6023 are being amended or repealed to allow flexibility in the manner in which the Child Support Program accepts payments and to remove provisions that are in statute.

Rules Coordinator: Vicki Tungate

Address: 494 State Street, Suite 300, Salem, OR 97301

Telephone: (503) 986-6086

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**Department of Revenue
Chapter 150**

Rule Caption: Defining "obtained the credit" for taxpayers that purchase business energy credits.

Date:	Time:	Location:
5-23-11	10:30 a.m.-12 p.m.*	955 Center St., Rm. 467 Salem, OR

Hearing Officer: Jason Barbee

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.354

Proposed Adoptions: 150-315.354

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

Summary: *Sign-in beginning at 10:15 a.m. If no person appears to testify, the hearing will adjourn at 10:45 a.m.

This rule makes permanent a temporary rule adopted on December 17, 2010. The rule gives guidance to taxpayers that purchase a business energy tax credit. The guidance helps taxpayers correctly identify the tax year which the purchased tax credit may first be claimed.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Debra L. Buchanan
Address: 955 Center St. NE, Salem, OR 97301
Telephone: (503) 945-8653

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

Rule Caption: Collection of Biometric Data for Driver License, Driver Permit or Identification Card.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.024

Stats. Implemented: ORS 807.024, 807.110, 807.400, 809.310 & 809.411

Proposed Amendments: 735-062-0016

Last Date for Comment: 5-23-11

Summary: ORS 807.024 requires each person who applies for a driver license, driver permit or identification card to submit to the collection of biometric data. ORS 801.163 defines biometric data as the physical characteristics of a person's face that can be used to authenticate a person's identity. A person submits to the collection of biometric data by having his or her photograph taken. DMV uses facial recognition technology to determine if the person photographed is the same person who was issued previously under that identity and if the person has ever been issued under another identity. The facial recognition technology requires a clear view of the person's iris and pupil of each eye as well as the structure of the face. DMV recently updated this rule to require the removal of eye glasses or face covering, but more recent occurrences in field offices have shown that the rule needs to more clearly state what is not allowed in order to collect the biometric data with the photograph. Therefore DMV proposes to amend the rule to include language that disallows face paint, novelty contact lenses and other products designed to distort a person's appearance.

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

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Rule Caption: Medical Standards, Certificates and Waivers for Drivers of Commercial Motor Vehicles.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.040 & 809.419

Other Auth.: Title 49, CFR Parts 391.41-391.49

Stats. Implemented: ORS 807.040, 807.100, 807.340 & 809.419

Proposed Amendments: 735-063-0000, 735-063-0050, 735-063-0060, 735-063-0065, 735-063-0070

Last Date for Comment: 5-23-11

Summary: There are federal medical standards that a person must meet to qualify for a commercial driver license (CDL) and to operate a commercial motor vehicle (CMV). The Oregon Department of Transportation, Driver and Motor Vehicle Services Division (DMV) currently may issue a waiver of physical disqualification to a driver who operates a CMV in Oregon intrastate commerce but does not meet all federal physical qualification standards required for a CDL. Certain drivers employed by for-hire carriers are not required to have a CDL but they are required to have a medical certificate or a waiver of physical disqualification in order to operate a CMV in Oregon. DMV proposes to amend OAR 735-063-0070 to specify that DMV may issue such drivers a waiver of physical disqualification if they qualify.

Other drivers, exempted under certain Federal Motor Carrier Safety Regulations from physical qualification requirements while operating in interstate commerce, but not exempt from the requirement to have a CDL, are required to have a medical certificate or a waiver of physical disqualification in order to operate a CMV in Oregon. This operation is not limited only to Oregon intrastate commerce and

DMV proposes to amend OAR 735-063-0070 to clarify this requirement.

Other amendments to these rules are proposed to correct references to federal regulations or for clarity.

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

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Rule Caption: Issuing Restricted Driving Privileges for Taking Lessons when Privileges are Suspended under At-Risk Program.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.120, 807.310, 807.340 & 809.419

Stats. Implemented: ORS 807.120, 807.310 & 807.340

Proposed Amendments: 735-074-0210, 735-071-0212, 735-076-0050, 735-076-0052

Last Date for Comment: 5-23-11

Summary: The At-Risk Driver Program includes the mandatory reporting program outlined in OAR Chapter 735 Division 74 and the voluntary reporting program outlined in OAR Chapter 735 Division 76. A person whose driving privileges are suspended under OAR Chapter 735 Division 74 has been suspended due to a physician or health care provider reporting a severe cognitive or functional impairment affecting a person's ability to safely operate a motor vehicle. The person's driving privileges or right to apply for driving privileges will remain suspended until the person has passed the DMV vision, knowledge and drive tests. A person reported for a cognitive impairment must receive a determination of medical eligibility by DMV's Medical Determination Officer prior to being eligible to take a DMV drive test.

A person whose driving privileges are suspended under OAR Chapter 735 Division 76 has been reported by a police officer, family member or other voluntary reporter. The voluntary reports may include descriptions of dangerous driving behavior or medical impairment or a combination of both. To regain driving privileges, the person may be required to receive a determination of medical eligibility by DMV's Medical Determination Officer and/or pass the DMV vision, knowledge and drive tests. The person's driving privileges or right to apply for driving privileges will remain suspended until the person has met all requirements.

A person whose driving privileges are suspended under the At-Risk Driver Program may wish to take driving lessons prior to taking a DMV drive test. It may be that the person has recovered from a medical issue, but due to that medical issue has not driven in several months or even a few years. The person may feel a need to refresh driving skills prior to taking a drive test. DMV may issue either a restricted license or restricted applicant temporary permit for the express purpose of taking driving lessons. DMV may issue a restricted license (under OAR 735-074-0210 or 735-076-0050) pursuant to ORS 807.120 when the person has driving privileges that are suspended. DMV may issue a restricted applicant temporary permit (under OAR 735-074-0212 or 735-076-0052) pursuant to ORS 807.310 when the person does not have driving privileges to restrict. The person's driving privileges may have expired, been surrendered, cancelled under OAR 735-062-0073 Denial of Further Testing, or the person may never have been granted Oregon driving privileges.

DMV has determined that the current rule requirements place an undue burden on persons who want to take driving lessons in order to obtain valid driving privileges under the At-Risk Driver Program. Therefore, DMV proposes to amend OAR 735-074-0210(2) and 735-076-0050(2) to remove the requirement that all applicants provide documentation from a medical provider or rehabilitation specialist before a restricted license or permit will be issued and to remove the requirement that a person who completes driving lessons must prove they should be allowed to take a DMV drive test. It is only when a

NOTICES OF PROPOSED RULEMAKING

person is denied a drive test under OAR 735-062-0073 that the person must provide such proof.

DMV proposes to amend OAR 735-074-0212 and 735-076-0052 to clarify when a person whose right to apply for driving privileges has been suspended and is eligible for a restricted applicant temporary permit and the requirements for issuance. These rule amendments also clarify that the suspension will be rescinded for 60 days but will be re-imposed without further notice or hearing if the person does not pass a drive test within that time period or is not otherwise eligible for driving privileges when the permit expires.

Other amendments are made for clarity.

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

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Department of Transportation, Highway Division Chapter 734

Rule Caption: Describes maximum allowed tow length for mobile homes traveling on U.S. Route 95.

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

Stats. Implemented: ORS 810.050, 818.200 & 818.220

Proposed Amendments: 734-075-0010

Last Date for Comment: 5-23-11

Summary: These rules describe the transportation of mobile homes and modular building units on highways under the authority of the Oregon Department of Transportation. A petition for permanent rule-making was received from the Oregon Manufactured Housing Association, requesting a revision to OAR 734-075-0010 to make a temporary allowance become permanent. With authorization from the Chief Engineer, ODOT temporarily allowed mobile homes up to 80 feet in length including the tongue, not otherwise authorized on US Route 95 due to length, to travel between Idaho and Nevada on US Route 95. The temporary allowance was needed because of temporary road restrictions on the primary and secondary routes motor carriers transporting 80 foot mobile homes from Idaho to Nevada are normally directed to take. OAR 734-075-0010 currently limits mobile home length to 75 feet, including the tongue. The Oregon Manufactured Housing Association has requested that the temporary route of U.S. Route 95 be made permanent for the movement of 80 foot long (including the tongue) mobile homes when traveling from Idaho to Nevada. During the temporary allowance, towed 80 foot long mobile homes traveling on U.S. Route 95 were observed in order to evaluate safety issues and road damage. There were no safety problems reported and the highway was not adversely affected by the movement of the 80 foot long mobile homes. The Oregon Manufactured Housing Association has stated that the ability to use U.S. Route 95 to travel between Idaho and Nevada saved the carrier approximately 200 miles of out-of-route travel per trip, along with fuel savings and other associated costs.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Rule Caption: ODOT intends to amend rules relating to modular building unit trailer lengths.

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

Stats. Implemented: ORS 810.050, 818.200 & 818.220

Proposed Amendments: 734-075-0025

Last Date for Comment: 5-23-11

Summary: These rules describe the requirements that apply to hauling vehicles for modular buildings units. The proposed amendment would provide an exception to allow an over-dimensional permit to authorize modular building trailers in lengths up to 75 feet that are fixed in length to be used for unladen (empty) return trips. The industry has modified trailers that are fixed in length to transport modular buildings units. The rule is necessary to accommodate modified trailers needed to transport increasingly larger modular buildings.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Rule Caption: ODOT intends to amend rules governing permits for vehicles that exceed the legal vehicle height.

Stat. Auth.: ORS 184.616 & 184.619

Stats. Implemented: ORS 818.220 & 818.225

Proposed Amendments: 734-082-0025

Last Date for Comment: 5-23-11

Summary: These rules describe allowances and limitations for vehicles and combinations of vehicles, including any load which exceeds 14 feet in height. The proposed amendment specifies the Department of Transportation Bridge Section as the responsible group for providing accurate vertical clearance measurements under all structures. Department policy for vertical clearance is to provide a 4 inch buffer zone between the structure and the load for cautionary purposes. In addition, the proposed amendment allows the Chief Engineer to authorize the Administrator of the Motor Carrier Transportation Division to approve routes and issue permits for loads that encroach the normally prescribed 4 inch buffer on a case by case exception basis taking into account the measurements provided by the Department of Transportation Bridge Section. The rules are needed to assign responsibility to the MCTD Administrator to research and approve over height permits for the rare cases where the load will encroach on the 4 inch buffer and an alternative route is either not desirable or readily available.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Employment Department, Child Care Division Chapter 414

Rule Caption: Update cardio-pulmonary resuscitation (CPR) training requirements.

Stat. Auth.: ORS 657.610

Stats. Implemented:

Proposed Amendments: 414-300-0110, 414-350-0110

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

Summary: 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

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

Telephone: (503) 947-1724

NOTICES OF PROPOSED RULEMAKING

Landscape Contractors Board Chapter 808

Rule Caption: Adopt 2011–2013 Budget.

Date: 5-20-11 **Time:** 10 a.m. **Location:** Roth's IGA
1130 Wallace Rd. NW
Salem, OR 97304

Hearing Officer: Lisa Walter Sedlacek

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 182.462

Proposed Amendments: 808-001-0008

Last Date for Comment: 5-31-11

Summary: 808-001-0008 – Adopts 2011–2013 budget.

Rules Coordinator: Kim Gladwill-Rowley

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

Telephone: (503) 378-5909, ext. 223

Rule Caption: Adds requirement to show intention to subcontract work to contract standards.

Date: 5-20-11 **Time:** 10 a.m. **Location:** Roth's IGA
1130 Wallace Rd. NW
Salem, OR

Hearing Officer: Lisa Walter Sedlacek

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.625

Proposed Amendments: 808-002-0020

Last Date for Comment: 5-23-11

Summary: 808-002-0020 – Adds requirement to show intention to subcontract work to contract standards.

Rules Coordinator: Kim Gladwill-Rowley

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

Telephone: (503) 378-5909, ext. 223

Rule Caption: Clarifies planting in outdoor pots and containers when they can be moved without the assistance of power equipment as landscape maintenance.

Date: 5-20-11 **Time:** 10 a.m. **Location:** Roth's IGA
1130 Wallace Rd. NW
Salem, OR

Hearing Officer: Lisa Walter Sedlacek

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.520 & 671.540

Proposed Amendments: 808-002-0200, 808-002-0620

Last Date for Comment: 5-23-11

Summary: 808-002-0200 – Adds planting in outdoor pots and containers that are part of a structure or require power equipment to move when empty to the definition of casual, minor or inconsequential.

808-002-0620 – Adds planting in outdoor pots and containers when the pots and containers can be moved without the assistance of power equipment when empty to landscape maintenance.

Rules Coordinator: Kim Gladwill-Rowley

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

Telephone: (503) 378-5909, ext. 223

Rule Caption: Clarifies a landscape contracting business license is required for planting on structures and adds requirements, and clarifies landscaping work is outdoors.

Date: 5-20-11 **Time:** 10 a.m. **Location:** Roth's IGA
1130 Wallace Rd. NW
Salem, OR

Hearing Officer: Lisa Walter Sedlacek

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.520, 671.540, 671.570 671.660(5) & 671.690

Proposed Amendments: 808-002-0455, 808-002-0500

Last Date for Comment: 5-23-11

Summary: 808-002-0455 – Clarifies the definition of install is for nursery stock installed outdoors and landscaping work on structures must be approved by the structural engineer, architect, or building code official.

808-002-0500 – Clarifies the definition of landscaping work to include nursery stock installed outdoors and the installation of root penetration preventions materials and other planting media.

Rules Coordinator: Kim Gladwill-Rowley

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

Telephone: (503) 378-5909, ext. 223

Rule Caption: Removes outdated requirements; clarifies managing employee requirements; requires verification form; adds penalty for violation of agency's rules.

Date: 5-20-11 **Time:** 10 a.m. **Location:** Roth's IGA
1130 Wallace Rd. NW
Salem, OR

Hearing Officer: Lisa Walter Sedlacek

Stat. Auth.: ORS 183.310–183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.560, 671.595 & 671.997

Proposed Adoptions: 808-030-0015, 808-030-0018

Proposed Amendments: 808-003-0015, 808-030-0010, 808-005-0020

Last Date for Comment: 5-23-11

Summary: 808-003-0015 – Requires verification form from designated managing employee who is not an owner of the business.

808-030-0010 – Removes outdated requirements.

808-030-0015 – Clarifies managing employee requirements.

808-030-0018 – Clarifies managing owner requirements.

808-005-0020 – Adds penalty for failure to comply with agency's administrative rules and failure of managing employee to notify the board when the managing employee ceases to act in the role of managing employee.

Rules Coordinator: Kim Gladwill-Rowley

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

Telephone: (503) 378-5909, ext. 223

Rule Caption: Adds criteria for allowing continuing education hours for preparation and research for teaching or presenting.

Date: 5-20-11 **Time:** 10 a.m. **Location:** Roth's IGA
1130 Wallace Rd. NW
Salem, OR

Hearing Officer: Lisa Walter Sedlacek

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.676

Proposed Amendments: 808-040-0025, 808-040-0040

Last Date for Comment: 5-23-11

Summary: 808-040-0025 – Adds preparation and research for teaching or presenting criteria for determining the number of continuing education hours allowed.

808-040-0040 – Adds preparation and research for teaching or presenting as acceptable subject matter for continuing education hours.

Rules Coordinator: Kim Gladwill-Rowley

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

Telephone: (503) 378-5909, ext. 223

NOTICES OF PROPOSED RULEMAKING

Occupational Therapy Licensing Board Chapter 339

Rule Caption: New rule for fingerprinting, contact info, reporting crimes, education records kept 7 years, technical change for rules and hearings.

Stat. Auth.: ORS 675.280, 675.290, 675.320 & 675.332

Other Auth.: Board review

Stats. Implemented:

Proposed Adoptions: 339-010-0012, 339-010-0018

Proposed Amendments: 339-001-0005, 339-001-0006, 339-005-0000, 339-010-0020, 339-010-0050

Last Date for Comment: 5-31-11, Close of Business

Summary: Technical amendments made to 339-001-0005 Model Rules of Practice and Procedure to update effective date and rule making statutes.

Technical amendment made to 339-001-0006 update Time for Requesting a Contacted Case Hearing from 21 to 30 days.

Changes in fees in 339-005-0000 to include cost for background checks, including fingerprinting and assessing costs of conducting workforce data surveys.

New rules for fingerprinting in 339-010-0012.

New rule in 339-010-0018 on requirement to keep name, address, telephone contact information current and reported within 30 days to Board.

Adding to 339-010-0020 new language on reporting crimes for unprofessional conduct.

Adding requirement to 339-010-0050 that educational records are kept for seven years.

Rules Coordinator: Felicia Holgate

Address: Occupational Therapy Licensing Board, 800 NE Oregon St., Suite 407, Portland, OR 97232

Telephone: (971) 673-0198

Oregon Board of Naturopathic Medicine Chapter 850

Rule Caption: Rule removes the Mifepristone from Formulary Compendium.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Proposed Amendments: 850-060-0226

Last Date for Comment: 5-31-11

Summary: Rule removes Mifepristone from classification (21) Oxytocics.

Rules Coordinator: Anne Walsh

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

Telephone: (971) 673-0193

Rule Caption: Clarify the certification process for Natural Childbirth.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.135

Proposed Amendments: 850-035-0230

Last Date for Comment: 5-30-11

Summary: Clarify the certification process for Natural Childbirth.

Rules Coordinator: Anne Walsh

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

Telephone: (971) 673-0193

Oregon Department of Education Chapter 581

Rule Caption: Modifies requirements relating to local assessment options.

Date:
5-25-11

Time:
1 p.m.

Location:
255 Capitol St. NE, Rm. 251A
Salem, OR 97310

Hearing Officer: Cindy Hunt

Stat. Auth.: ORS 329.451

Stats. Implemented: ORS 329.045, 329.075, 329.451 & 329.485

Proposed Amendments: 581-022-0615

Last Date for Comment: 5-25-11, 5 p.m.

Summary: The proposed revision to OAR 581-22-0615 (Assessment of Essential Skills) serves a twofold purpose:

- Eliminates the requirement for the Assessment of Essential Skills Review Panel (AESRP) to recommend criteria for the local assessment option; and

- Requires school districts to make public certain documentation, should they elect to utilize the local assessment option.

Rules Coordinator: Diane Roth

Address: 255 Capitol St. NE, Salem, OR 97310

Telephone: (503) 947-5791

Rule Caption: Updates minimum standards for retrofit of school buses.

Date:
5-25-11

Time:
1 p.m.

Location:
255 Capitol St. NE, Rm. 251A
Salem, OR 97310

Hearing Officer: Cindy Hunt

Stat. Auth.: ORS 820.100–820.120

Stats. Implemented: ORS 820.100–820.120

Proposed Adoptions: 581-053-0516

Proposed Amendments: 581-053-0512

Proposed Repeals: 581-053-0517

Last Date for Comment: 5-25-11, 5 p.m.

Summary: Updates minimum standards for school buses that are used for the first time in Oregon and combines chassis and body requirements into one rule. Repeals separate rule regarding minimum standards for school bus bodies. Creates separate minimum standards that apply to all buses regardless of purchase or manufacture date.

Oregon Revised Statute 820.100 directs the State Board of Education to adopt vehicle standards for school buses consistent with national standards. National standards are updated every five years at the National Congress on School Transportation. Oregon is an active participant in this congress. Updates in this rule ensure that our standards are in line with national standards.

In the past, school bus bodies were purchased separately from chassis that were normally made by a truck manufacture. Because of this process, rules were adopted for both parts of the school bus separately. School bus manufacturing has become more streamlined and most school buses are built from the ground up by one company and all school buses use chassis that are purpose built for the school bus industry.

Currently retrofit standards are part of OAR 581-053-0512 “Minimum Standards for School Bus Chassis” and OAR 581-053-0517 “Minimum Standards for School Bus Bodies.” In order to make our rules more understandable, both of these OARs have been combined. Removing the retrofit standards out of the minimum standards for new school buses into their own rule, will further clarify the Department’s intent in rule.

Rules Coordinator: Diane Roth

Address: 255 Capitol St. NE, Salem, OR 97310

Telephone: (503) 947-5791

Oregon Health Authority Chapter 943

Rule Caption: Allows the Oregon Health Authority to receive reimbursement for providing public records.

Stat. Auth.: ORS 192.430 & 413.042

Stats. Implemented: ORS 192.430, 192.440 & 192.450

Proposed Adoptions: 943-003-0000, 943-003-0010

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

Summary: Allows the Authority, in order to comply with request for public records, to establish fees, in policy, to reimburse Authority costs of providing public records. Limits amount of fee to \$25 that

NOTICES OF PROPOSED RULEMAKING

the Authority may charge to comply with request unless the Authority provides the requestor with notification of estimated amount of fee and requestor confirms that requestor wants the Authority to proceed with making records available.

Proposed rules will soon be available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>

For hardcopy requests, call: (503) 945-6302.

Rules Coordinator: Kym Gasper
Address: 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6302

Rule Caption: Establishment of process for restricting an individual's access to Authority premises, employees, and visitors.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 654.010

Proposed Adoptions: 943-012-0005, 943-012-0010, 943-012-0015, 943-012-0020, 943-012-0025

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

Summary: Allows the Authority to protect Authority employees, visitors, and its premises from threats or acts of violence. Defines prohibited conduct and establishes criteria for restricting an individual's access to Authority employees, visitors, and its premises when an individual has engaged in prohibited conduct.

Proposed rules will soon be available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>

For hardcopy requests, call: (503) 945-6302.

Rules Coordinator: Kym Gasper
Address: 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6302

Rule Caption: Rulemaking procedures and delegation of rulemaking authority for Oregon Health Authority.

Stat. Auth.: ORS 183.341 & 413.042

Stats. Implemented: ORS 183.330, 183.335 & 183.341

Proposed Adoptions: 943-001-0005, 943-001-0007

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

Summary: The Authority needs to adopt these rules to bring the agency into compliance with current statutes related to rulemaking filings and delegation of rulemaking authority requirements. The Authority proposes to adopt these rules in Chapter 943 which applies to administrative rules for the Authority agency-wide. The Authority is proposing to adopt these rules to conform with Notice of Proposed Rulemaking and temporary rule filing requirements concerning rulemaking and delegation of rulemaking authority requirements in ORS 183.

Proposed rules will soon be available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>

For hardcopy requests, call: (503) 945-6302.

Rules Coordinator: Kym Gasper
Address: 500 Summer St. NE Salem, OR 97301
Telephone: (503) 945-6302

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

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

Date:	Time:	Location:
5-16-11	1 p.m.	500 Summer St. NE, Rm. 137A Salem, OR 97301

Hearing Officer: Richard Luthe

Stat. Auth.: ORS 179.040 & 413.042

Stats. Implemented: ORS 179.321, 183.458, 426.070 & 426.385

Proposed Amendments: 309-114-0005, 309-114-0020

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

Last Date for Comment: 5-17-11

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

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

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

Rules Coordinator: Richard Luthe

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

Telephone: (503) 947-1186

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

Rule Caption: July 2011 – stainless steel crowns, pulpal regeneration, prefabricated post and core services, other clarifications.

Date:	Time:	Location:
5-17-11	10:30 a.m.	Human Services Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 413.042, 414.065 & 414.707

Stats. Implemented: ORS 414.025, 414.065 & 414.707

Proposed Adoptions: 410-123-1220, 410-123-1260

Last Date for Comment: 5-19-11

Summary: The Dental Services Program administrative rules govern Division payment for services to certain clients. The Division will amend rules 410-123-1220 and 410-123-1260 as follows:

- To cover stainless steel crowns on anterior primary teeth in addition to posterior primary and permanent teeth for clients under age 21 or who are pregnant; to list coverage of a newly created dental code for pulpal regeneration that is limited to clients under age 21 or who are pregnant; to clarify that prefabricated post and core services are covered only for clients under 21 or pregnant; to reference the updated "Covered and Non-Covered Services document" and other minor clarifications.

- To clarify current policies and procedures to ensure these rules are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance and help facilitate provider compliance with eligibility, service coverage and limitations, and billing requirements.

- To reflect the Oregon Health Authority name change and updated statutory reference.

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

Proposed rules are available on the DMAP website: <http://www.dhs.state.or.us/policy/healthplan/rules/notices.html>

For hardcopy requests, call: (503) 947-5081

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

Rule Caption: July 2011 – update criteria for definitions, exceptional needs, client materials and payment.

Date:	Time:	Location:
5-17-11	10:30 a.m.	Human Services Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 413.042

Stats. Implemented: 414.025, 414.065 & 409.010

Proposed Amendments: 410-141-0300, 410-141-0420

NOTICES OF PROPOSED RULEMAKING

Proposed Repeals: 410-141-0110, 410-141-0115

Last Date for Comment: 5-19-11

Summary: The Oregon Health Plan (Managed Care) program administrative rules govern Division payments for services to clients. The Division needs to amend as follows:

- OAR 410-141-0300 to update client materials requirements and OHA stat line
- OAR 410-141-0420 to update provider enrollment criteria and OHA stat line

The Division will repeal as follows:

- OAR 410-141-0110 to remove PHP survey criteria; obsolete
- OAR 410-141-0115 to remove PCM survey criteria; obsolete
- All above rules will reflect the Oregon Health Authority name change and updated statutory reference.
- Other text may be revised to improve readability and to take care of necessary “housekeeping” corrections.

Proposed rules are available on the Division website: <http://www.dhs.state.or.us/policy/healthplan/rules/notices.html>

For hardcopy requests, call: (503) 947-5081

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

Rule Caption: July ‘11 – Clarify rule regarding individual practitioner enrollment, amend rule to ensure is consistent with general rules

Date:	Time:	Location:
5-17-11	10:30 a.m.	Human Services Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-146-0440, 410-146-0460

Last Date for Comment: 5-19-11

Summary: The American Indian/Alaska Native Services Program rules govern the Division of Medical Assistance Programs’ (Division) payments for services provided to certain clients. The Division will amend 410-146-0440 and 410-146-0460 as follows:

- Eliminate barriers to AI/AN providers enrolling individual practitioners employed by the health center, and to reference OAR 410-120-0045 and not an outreach agreement administered by the Division.
- Reflect the Oregon Health Authority name change and updated statutory reference.
- Other text may be revised to improve readability and to take care of necessary “housekeeping” corrections.

Proposed rules are available on the DMAP website: <http://www.dhs.state.or.us/policy/healthplan/rules/notices.html>

For hardcopy requests, call: (503) 947-5081

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

Rule Caption: July ‘11 – Clarify rule regarding individual practitioner enrollment, amend rule to ensure is consistent with general rules.

Date:	Time:	Location:
5-17-11	10:30 a.m.	Human Services Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-147-0340, 410-147-0400

Last Date for Comment: 5-19-11

Summary: The Federally Qualified Health Centers and Rural Health Clinics (FQHC/RHC) Program rules govern the Division of Medical Assistance Programs’ (Division) payments for services provided to certain clients. The Division will amend 410-147-0340 and 410-147-0400 as follows:

- To eliminate barriers to FQHC/RHC’s enrolling individual practitioners employed by the health center, and to reference OAR 410-120-0045 and not an outreach agreement administered by the Division.
- All above rules will reflect the Oregon Health Authority name change and updated statutory reference.
- Other text may be revised to improve readability and to take care of necessary “housekeeping” corrections.

Proposed rules are available on the DMAP website: <http://www.dhs.state.or.us/policy/healthplan/rules/notices.html>

For hardcopy requests, call: (503) 947-5081

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

Rule Caption: Move Law Enforcement Medical Liability Program from chapter 461 to 410.

Date:	Time:	Location:
5-17-11	10:30 a.m.	Human Services Bldg., Rm. 137C 500 Summer St. NE Salem, OR 97301

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.805 & 414.815

Proposed Ren. & Amends: 461-012-0100 to 410-160-0000, 461-012-0150 to 410-160-0100

Last Date for Comment: 5-19-11

Summary: The Law Enforcement Medical Liability program administrative rules govern Division payments for services to certain clients. The Law Enforcement Medical Liability Account Program is an existing program that is being moved from chapter 461 (Children, Adult and Families) to chapter 410 (Division of Medical Assistance Programs). The Division needs to renumber and update the rules with current information, name changes, codification, punctuation and formatting consistent with other Division rules.

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

Proposed rules are available on the Division webpage: <http://www.dhs.state.or.us/policy/healthplan/rules/notices.html>

For hardcopy requests, call: (503) 947-5081

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 Health Authority, Office of Private Health Partnerships Chapter 442

Rule Caption: Expand program income levels.

Stat. Auth.: ORS 414.839–414.864

Stats. Implemented: ORS 414.844

Proposed Amendments: 442-005-0000

Last Date for Comment: 5-21-11

Summary: FHIAP is expanding program levels from 185 percent up through 200 percent to make insurance affordable to more children, adults and families.

Rules Coordinator: Margaret Moran

Address: Oregon Health Authority, Office of Private Health Partnerships, 250 Church St. SE, Suite 200, Salem, OR 97301

Telephone: (503) 378-5664

NOTICES OF PROPOSED RULEMAKING

Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: New Definitions and New Disease Reporting Requirements.

Date:	Time:	Location:
6-8-11	3 p.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1A Portland, OR 97232

Hearing Officer: Jana Fusell

Stat. Auth.: ORS 431.001, 431.110, 431.120, 432.060, 433.001–433.035, 433.045–433.080, 433.110–433.220, 433.340, 433.350, 437.010, 437.030, 438.450, 616.010, 616.745, 624.005 & 624.080

Stats. Implemented: ORS 431.001, 431.110, 431.150, 431.155, 431.170, 433.001–433.035, 433.065, 433.106, 433.110 –433.220, 433.260, 433.273, 433.345, 433.350, 433.360, 433.407, 433.411, 433.419, 437.010, 437.030, 438.310, 616.745 & 624.380

Proposed Adoptions: 333-019-0003

Proposed Amendments: 333-017-0000, 333-017-0005, 333-018-0000, 333-018-0005, 333-018-0010, 333-018-0013, 333-018-0015, 333-018-0018, 333-018-0020, 333-018-0035, 333-019-0000, 333-019-0002, 333-019-0005, 333-019-0010, 333-019-0014, 333-019-0024, 333-019-0031, 333-019-0039, 333-019-0041, 333-019-0046

Proposed Repeals: 333-018-0030

Last Date for Comment: 6-10-11, 5 p.m.

Summary: The Oregon Health Authority, Public Health Division, Acute and Communicable Disease Prevention program is proposing to permanently amend rules in chapter 333, divisions 17, 18 and 19 concerning reportable diseases in order to add new definitions and new disease requirements.

Rules Coordinator: Brittany Sande

Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (971) 673-1291

Oregon Liquor Control Commission Chapter 845

Rule Caption: Amend two distilled spirits tasting rules allowing mixing with nonalcoholic beverages.

Date:	Time:	Location:
5-24-11	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.398 & 471.750

Proposed Amendments: 845-005-0428, 845-015-0155

Last Date for Comment: 6-7-11

Summary: There are two rules in this package: OAR 845-005-0428 Retail On-Premises Distilled Spirits Sampling Involving Distillery Representative and OAR 845-015-0155 Consumption in a Retail Liquor Store. Both of these rules describe the conditions under which distilled spirits tastings for the public involving distilled spirits representatives are allowed. The first rule governs distilled spirits tastings at a Full On-Premises location and the second governs tastings in a retail liquor store. In November 2009 the Commission adopted new tastings rules for tastings at a Distillery licensee's premises and then in September 2010 the Commission adopted the new Special Event Distillery rule which included the parameters for allowable distilled spirits tastings at these events. The proposed rule amendments in this package would allow the mixing of distilled spirits with nonalcoholic beverages in tastings which would parallel what is now allowed at the Distillery premises and at their special events. Under the proposal the maximum one-quarter ounce distilled spirits per taste and one-half ounce total distilled spirits per customer per day would remain the same. The proposed amendments would allow, at both a Full On-Premises location and at a retail liquor store, the

ability to use a nonalcoholic mixer to enhance the taste for consumers and set the maximum total ounces of liquid in each taste (including mixer) at two ounces.

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

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Rule Caption: Requires licensees with evidence of serious compliance problems to submit and follow a compliance plan.

Date:	Time:	Location:
5-26-11	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.030

Proposed Adoptions: 845-006-0497

Last Date for Comment: 6-9-11

Summary: Currently compliance plans are voluntary and are usually developed at the time of an intervention meeting between regulatory staff and a licensee. Staff proposes adoption of a new rule which will give the Commission authority to require such plans when there is evidence of compliance problems that are or are likely to become serious. The compliance plan will set out specific actions the licensee will take to address the problems and must be approved by the Commission. The new proposed rule will also give the Commission the authority to sanction a licensee if a required compliance plan is not submitted or is not being followed.

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

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Oregon Public Employees Retirement System Chapter 459

Rule Caption: Clarify member's ability to make retirement credit purchases.

Date:	Time:	Location:
5-17-11	1 p.m.	PERS, Boardroom 11410 SW 68th Pkwy. Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.115, 238.125, 238.135, 238.145, 238.148, 238.156, 238.157, 238.160, 238.162, 238.165, 238.175, 526.052 & 1999 OL Ch. 971, Sec. 2

Proposed Adoptions: 459-011-0150

Last Date for Comment: 5-18-11

Summary: Senate Bill 399 (2009), codified as ORS 238.222, allows eligible members to restore forfeited creditable service or purchase retirement credit with pre-tax dollars transferred from certain other retirement plans. The bill has an operative date of September 1, 2011. Previously, staff noticed rulemaking to address the parameters for eligibility to fund a purchase with a trustee-to-trustee transfer, guidance on how PERS will treat excess dollars transferred to PERS, and the relevant timelines. Conforming modifications were proposed to other administrative rules to reflect this new purchase funding method. As these rules were developed further, staff concluded that putting these transfers in a broader context made sense, as these new rules addressed aspects of service credit purchases that were of general application, but no general rule addressed purchases.

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

Rules Coordinator: Daniel Rivas

NOTICES OF PROPOSED RULEMAKING

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

Date:
6-28-11

Time:
2 p.m.

Location:
PERS, Boardroom
11410 SW 68th Pkwy.
Tigard, OR

Rule Caption: Clarify Social Security administration and repeal obsolete rules.

Date: 6-28-11
Time: 2 p.m.
Location: PERS, Boardroom
11410 SW 68th Pkwy.
Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 237.470

Stats. Implemented: ORS 237.410, 237.480, 237.500 & IRC 3121(d)(2)

Proposed Amendments: 459-020-0015, 459-020-0030, 459-020-0040, 459-020-0050

Proposed Repeals: 459-020-0005, 459-020-0010, 459-020-0012, 459-020-0020, 459-020-0025, 459-020-0035, 459-020-0045, 459-020-0055

Last Date for Comment: 7-1-11

Summary: The primary need for this rulemaking is to align the Chapter 459, Division 020, Old-Age and Survivors Insurance rules with current practice, and to repeal obsolete rules.

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

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.650, 238A.120 & 238A.450

Stats. Implemented: ORS 238.280, 238.300, 238.320-238.345, 238.435, 238A.140 & 238A.235

Proposed Adoptions: 459-010-0019, 459-013-0050

Proposed Repeals: 459-010-0165, 459-010-0170

Last Date for Comment: 7-1-11

Summary: These rule changes will clarify the administration of police officer or firefighter and other than police officer or firefighter membership and retirement benefits.

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

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

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**Oregon University System,
Eastern Oregon University
Chapter 579**

Rule Caption: Amend special student and course fees.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 579-020-0006

Last Date for Comment: 5-23-11

Summary: Amend fees charged to students for special uses of facilities, services or supplies at Eastern Oregon University.

Rules Coordinator: Teresa Carson-Mastrude

Address: Oregon University System, Eastern Oregon University, One University Blvd., Inlow Hall 202A, La Grande, OR 97850

Telephone: (541) 962-3773

Rule Caption: Establishes requirements and Limitations for Self-Directed Brokerage Option of Oregon Savings Growth Plan.

Date: 6-28-11
Time: 2 p.m.
Location: PERS, Boardroom
11410 SW 68th Pkwy.
Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401-243.507

Proposed Adoptions: 459-050-0120

Proposed Amendments: 459-050-0037, 459-050-0077, 459-050-0150, 459-050-0300

Last Date for Comment: 7-1-11

Summary: The Oregon Investment Council approved the Oregon State Treasury adding a Self-Directed Brokerage Option (SDBO) to the Oregon Savings Growth Plan (OSGP).

The proposed rule and rule modifications establish requirements for participation in the SDBO, limitations on transactions involving the SDBO, and clarify the interaction of the SDBO with certain other OSGP rules and requirements.

The proposed modifications to OAR 459-050-0150 also eliminate the requirement that the unforeseeable emergency occur within a defined period before or after application for the emergency withdrawal.

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

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Rule Caption: Repeal of the EOU Dogs on Campus policy.

Stat. Auth.: ORS 351.060

Stats. Implemented: ORS 351.060

Proposed Repeals: 579-050-0005

Last Date for Comment: 5-23-11

Summary: The proposed repeal of the Dogs on Campus policy is to accommodate institutional and federal ADA regulations and to establish appropriate policy related to Animal Control on the Eastern Oregon University Campus.

Rules Coordinator: Teresa Carson-Mastrude

Address: Oregon University System, Eastern Oregon University, One University Blvd., Inlow Hall 202A, La Grande, OR 97850

Telephone: (541) 962-3773

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**Oregon University System,
Oregon Institute of Technology
Chapter 578**

Rule Caption: To amend the Schedule of Special Institutional Fees and Charges.

Date: 5-27-11

Time: 3 p.m.

Location: Snell Hall, Rm. 215
3201 Campus Dr.
Klamath Falls, OR 97601

Hearing Officer: Mary Ann Zemke

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 578-041-0030

Last Date for Comment: 5-27-11

Summary: 578-041-0030 Amends the Schedule of Special Institution Fees and Charges. Amendments allow for increases, revisions,

Rule Caption: Clarify administration of combined and concurrent service membership and retirement benefits.

NOTICES OF PROPOSED RULEMAKING

additions or deletions of special course fees and general service fees for fiscal year 2011–2012. The schedule of subject fees may be obtained from the Oregon Institute of technology Office.

Rules Coordinator: Leticia Hill

Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97601-8801

Telephone: (541) 885-1133

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**Oregon University System,
Oregon State University
Chapter 576**

Rule Caption: Amends Oregon State University's Alcoholic Beverage Policy.

Date:	Time:	Location:
5-31-11	1 p.m.	Memorial Union, Rm. 206 (OSU Campus) Corvallis, OR

Hearing Officer: Barbara Melton

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 576-060-0010, 576-060-0015, 576-060-0020, 576-060-0025, 576-060-0031, 576-060-0038

Last Date for Comment: 6-3-11, 5 p.m.

Summary: These amendments eliminate references to OARs that no longer exist, update name changes of various departments, add the baseball stadium complex and provide clarity in definitions.

Rules Coordinator: Barbara Melton

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

Telephone: (541) 737-6262

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Rule Caption: Disbursement by Electronic Funds Transfer (EFT).

Date:	Time:	Location:
5-31-11	1 p.m.	Memorial Union, Rm. 206 (OSU Campus) Corvallis, OR

Hearing Officer: Barbara Melton

Stat. Auth.: ORS 351 & 293.525

Stats. Implemented: ORS 351 & 293.525

Proposed Adoptions: 576-010-0006

Last Date for Comment: 6-3-11, 5 p.m.

Summary: Provides for Oregon State University to make disbursements primarily by Electronic Funds Transfers.

Rules Coordinator: Barbara Melton

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

Telephone: (541) 737-6262

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Rule Caption: Sets fees/charges at Oregon State University, fiscal year 2011–2012.

Date:	Time:	Location:
5-31-11	1 p.m.	Memorial Union, Rm. 206 (OSU Campus) Corvallis, OR

Hearing Officer: Barbara Melton

Stat. Auth.: ORS 351.070 & 352.360

Other Auth.: OAR 580-040-0010

Stats. Implemented: ORS 351.070 & 352.360

Proposed Amendments: 576-010-0000

Last Date for Comment: 6-3-11, 5 p.m.

Summary: The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2011–2012. The rule states: "The University hereby adopts by reference a list of fees and charges for fiscal year 2011–2012. The list of fees and charges is available at Oregon State University's Valley Library, and is hereby incorporated by reference in the rule."

Rules Coordinator: Barbara Melton

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

Telephone: (541) 737-6262

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Rule Caption: Amends Oregon State University's Student Conduct Code.

Date:	Time:	Location:
5-31-11	1 p.m.	Memorial Union, Rm. 206 (OSU Campus) Corvallis, OR

Hearing Officer: Barbara Melton

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 576-015-0020, 576-015-0050

Last Date for Comment: 6-3-11, 5 p.m.

Summary: This rule makes numbering corrections to OSU's Student Conduct Code, and deletes one unnecessary and redundant paragraph.

Rules Coordinator: Barbara Melton

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

Telephone: (541) 737-6262

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Rule Caption: Revision of rules relating to university owned and operated housing.

Date:	Time:	Location:
5-31-11	1 p.m.	Memorial Union, Rm. 206 (OSU Campus) Corvallis, OR

Hearing Officer: Barbara Melton

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 576-017-0005

Proposed Repeals: 576-017-0010, 576-017-0015, 576-017-0020

Last Date for Comment: 6-3-11, 5 p.m.

Summary: This rule change clarifies Oregon State University's housing rules to bring them in line with current university policies, and repeal administrative rules that are unnecessary in light of those policies.

Rules Coordinator: Barbara Melton

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

Telephone: (541) 737-6262

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Rule Caption: Amendment of rules regarding OSU's College of Veterinary Medicine's Discounted Fee Program.

Date:	Time:	Location:
5-31-11	1 p.m.	Memorial Union, Rm. 206 (OSU Campus) Corvallis, OR

Hearing Officer: Barbara Melton

Stat. Auth.: ORS 351.070

Other Auth.: OAR 580-040-0010

Stats. Implemented: ORS 351.070

Proposed Amendments: 576-010-0031, 576-010-0036, 576-010-0041

Last Date for Comment: 6-3-11, 5 p.m.

Summary: This amendment adds veterinarians to Oregon State University's College of Veterinary Medicine's discounted fee program.

Rules Coordinator: Barbara Melton

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

Telephone: (541) 737-6262

NOTICES OF PROPOSED RULEMAKING

Oregon University System, Southern Oregon University Chapter 573

Rule Caption: Special Fees.

Date: 5-31-11	Time: 10 a.m.	Location: Churchill Hall, Rm. 220 Southern Oregon University 1250 Siskiyou Blvd. Ashland, OR 97520
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Hearing Officer: Linda Cannon

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 573-040-0005

Last Date for Comment: 5-31-11

Summary: The proposed rule amendments eliminate fees that are no longer necessary and establish, increase, or decrease fees to more accurately reflect the actual costs of instruction for certain sources and special services not otherwise funded through the institution's operating budget.

Rules Coordinator: Treasa Sprague

Address: Oregon University System, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520

Telephone: (541) 552-6319

Rule Caption: Amend Code of Student Conduct.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 573-076-0000, 573-076-0020, 573-076-0050, 573-076-0060, 573-076-0070, 573-076-0080, 573-076-0130

Last Date for Comment: 5-31-11

Summary: SOU's Code of student Conduct outlining SOU's philosophy, expectations, policies, and procedures for students.

Rules Coordinator: Treasa Sprague

Address: Oregon University System, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520

Telephone: (541) 552-6319

Rule Caption: Parking Enforcement and Appeals.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Proposed Adoptions: 573-050-0016

Proposed Amendments: 573-050-0005, 573-050-0015, 573-050-0020, 573-050-0025, 573-050-0040

Last Date for Comment: 5-27-11

Summary: This amendment in division 50 edits language to correct subsections of the rule and adopt one new rule.

Rules Coordinator: Treasa Sprague

Address: Oregon University System, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520

Telephone: (541) 552-6319

Parks and Recreation Department Chapter 736

Rule Caption: Implement changes to improve public safety during the State Fair and other events. Make editorial changes to clarify rule if needed.

Date: 5-19-11	Time: 1 p.m.	Location: Oregon State Fair and Exposition Center, Cascade Hall 2330 17th St. NE Salem, OR
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Hearing Officer: Staff

Stat. Auth.: ORS 565.060

Stats. Implemented: ORS 565

Proposed Amendments: Rules in 736-201

Last Date for Comment: 5-31-11

Summary: Amend OAR 736-201-0065 to define items prohibited on Oregon Exposition Center (OEC) property, outline the process for

searches that occur at the OEC gates and inside the gates, and better organize the rule to provide clearer notice to the public for inspections during the Oregon State Fair and other events at OEC. Amend OAR 736-201-0040 to provide greater detail on the advertising, canvassing and soliciting permit process, as well as the rules of conduct and conditions for revoking a permit for those allowed to advertise, canvass or solicit at OEC. Amend other rules in OAR 736-201 if necessary to improve clarity and organization and thus provide better notice to the public for the chapter pertaining to the Oregon State Fair and Exposition Center.

Rules Coordinator: Vanessa DeMoe

Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301

Telephone: (503) 986-0719

Rule Caption: Implements new ADA regulations, allows pets in designated facilities and requires campsites be occupied.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Proposed Amendments: 736-010-0015, 736-010-0025, 736-010-0026, 736-010-0030, 736-010-0050

Last Date for Comment: 5-31-11

Summary: New federal regulations implementing the American with Disabilities Act of 1990 (42 USC 12181) (ADA) expand the types of mobility devices that may be used for access. This broadening of the range of devices that may not be used requires changes to OAR 736, division 10, to allow such devices for the purposes of ADA access. The new ADA regulations also define "Service Animal" which is being incorporated into division 10 rule, and require that miniature horses be allowed in specific facilities subject to certain considerations.

Rules prohibiting pets in yurts and cabins are being amended to allow pets in those facilities that have been designated as pet friendly.

The rule on campsite occupancy is being amended to clarify that a site must be occupied the first night after any belongings are left in the site and must remain occupied each night during the length of the stay.

Rules Coordinator: Vanessa DeMoe

Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301

Telephone: (503) 986-0719

Rule Caption: Defines Foster and Veterans waiver eligibility; reservation cancellation; no show; reservation process for ADA facilities.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Proposed Amendments: 736-015-0006, 736-015-0015, 736-015-0035

Last Date for Comment: 5-31-11

Summary: Division 15 rules are being amended to: establish the requirements for proof of eligibility for Veterans and Foster Family fee waiver programs; clearly define what a reservation cancellation entails; establish procedures for releasing a reservation when the camper does not claim in on the first night; and bring the reservation process for accessible facilities in compliance with federal ADA regulations.

Rules Coordinator: Vanessa DeMoe

Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301

Telephone: (503) 986-0719

Physical Therapist Licensing Board Chapter 848

Rule Caption: Amend current rule expense budget figure to reflect 2011-2013 Board approved expense budget.

NOTICES OF PROPOSED RULEMAKING

Date: 6-10-11
Time: 8:30 a.m.
Location: PSOB
800 NE Oregon St., 1-D
Portland, OR

Hearing Officer: James D. Heider

Stat. Auth.: ORS 182.462

Stats. Implemented: ORS 182.462

Proposed Amendments: 848-005-0010

Last Date for Comment: 6-9-11, 4:30 p.m.

Summary: The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2011-2013 Biennium Budget of \$988,900 covering the period from July 1, 2011 through June 30, 2013. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$988,900 for the effective operation of the Board. The Board will not exceed the approved 2011-2013 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) and (2). Copies of the budget are available on the Board website or by contacting the Board's office.

Last day for consideration of written testimony, 4:30 p.m. on Thursday June 9, 2011, all oral testimony will be considered at the public hearing Friday, June 10, 2011 at 8:30 a.m.

Rules Coordinator: James Heider

Address: Physical Therapist Licensing Board, 800 NE Oregon St, Suite 407, Portland, OR 97232

Telephone: (971) 673-0203

Public Utility Commission Chapter 860

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

Date: 5-16-11
Time: 9:30 a.m.
Location: Public Utility Commission
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: 5-24-11, Close of Business

Summary: A current provision in the net metering rules regarding aggregation of meters (OAR 860-039-0065) requires that aggregated meters be on the same rate schedule. The proposed rule changes eliminate that provision and make additional changes to facilitate customer-generators participating in the net-metering program to aggregate meters on different rate schedules under certain conditions.

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 and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418. For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>. Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16594>. A copy of the Commission Staff's proposed rules are available online at <http://edocs.puc.state.or.us/efdocs/HCB/ar548hcb125359.pdf> (attached to the prior notice).

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at diane.davis@state.or.us or (503) 378-4372 by close of business May 11, 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

Rule Caption: In the Matter of Amending Division 38 Rules to Include New Utility-Owned Resources in Revenue Requirement at Cost and to Clarify Language.

Date: 6-2-11
Time: 9:30 a.m.
Location: PUC Main Hearing Rm., 1st Floor
550 Capitol St. NE
Salem, OR 97301

Hearing Officer: Michael Grant

Stat. Auth.: ORS 183, 756.040, & 757.600-757.667

Stats. Implemented: ORS 757.600-757.667

Proposed Amendments: 860-038-0080, 860-038-0480

Last Date for Comment: 6-2-11, 5 p.m.

Summary: As a result of the Commission's investigation to re-examine and update resource planning acquisition policies (UM 1066), the Commission ordered that a rulemaking be opened to amend OAR 860-038-0080(1)(b) to require that new utility-owned resources be included in revenue requirement at cost. See Order No. 11-007. This rule amendment makes the change ordered by the Commission and will eliminate the need for utilities to file waiver requests and for the Commission to process the waiver requests.

Also, OAR 860-038-0480(12) requires an amendment to clarify that self-directing customer credits are applied to specific accounts.

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 550 on comments and file them by e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418. For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>. Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16725>.

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at diane.davis@state.or.us or (503) 378-4372 by close of business May 31, 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: Amending Rules Involving Contested Case Hearings.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.232 & 260.995

Proposed Amendments: 165-001-0015, 165-001-0050

Last Date for Comment: 5-24-11

Summary: OAR 165-001-0015 is proposed for amendment to remove reference to a political committee being represented by any individual identified as the candidate, treasurer, alternate transaction filer, person designated as the correspondence recipient or director in the most recent statement of organization filed with the filing officer in contested case hearings.

OAR 165-001-0050 is proposed for amendment to clarify and make uniform the rule language.

Rules Coordinator: Brenda Bayes

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

Telephone: (503) 986-1518

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Updating NVRA Agency Designations and Compiling and Reporting Requirements.

Stat. Auth.: ORS 246.150 & 247.208

Stats. Implemented: ORS 247.208

Proposed Amendments: 165-005-0055, 165-005-0065

Last Date for Comment: 5-24-11

Summary: These rules are proposed for amendment to update the designated NVRA agencies to their correct names, and to provide clarification to how counties must track voter registration cards for reporting purposes.

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: Amendment of the 2010 Campaign Finance Manual.

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

Stats. Implemented: ORS 260.005, 260.007, 260.035, 260.037, 260.038, 260.039, 260.41, 260.042, 260.043, 260.044, 260.045, 260.046, 260.049, 260.054, 260.055, 260.056, 260.057, 260.076, 260.078, 260.083, 260.085, 260.102, 260.112, 260.118, 260.156 & 260.232

Proposed Amendments: 165-012-0005

Last Date for Comment: 5-24-11

Summary: This proposed amendment revises the *2010 Campaign Finance Manual* by updating the maximum penalty assessed for late filings of contributions received during a legislative session.

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: Updating the Statistical Sampling Procedures for State and Local Initiative, Referendum and Recall Petitions.

Stat. Auth.: ORS 246.150, 250.105, 250.215, 250.315 & 255.175

Stats. Implemented: ORS 250.105, 250.215, 250.315, 255.175 & 260.567

Proposed Amendments: 165-014-0030, 165-014-0110, 165-014-0275

Proposed Repeals: 165-014-0032

Last Date for Comment: 5-24-11

Summary: OAR 165-014-0030 and 165-014-0110 are proposed for amendment to modify the criteria for which the Secretary of State's staff or local elections officials will remove cover and signature sheets prior to signature verification. Technical updates are proposed to the rule to incorporate the procedures from OAR 165-014-0032 into OAR 165-014-0030 as well as clarification to the appendices which contain the sampling formulas for state and local petitions.

OAR 165-014-0032 is proposed for repeal because the procedures contained within the rules are proposed for incorporation to OAR 165-014-0030 to streamline the state initiative signature verification process.

OAR 165-014-0275 is proposed for amendment to update specific standards that an Elections Official will review a petition sheet for to determine if there has been a violation of ORS 260.567.

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 Pharmacy Chapter 855

Rule Caption: Amend Controlled Substances Schedule I with addition of certain synthetic cannabinoids and other dangerous chemicals.

Adm. Order No.: BP 2-2011

Filed with Sec. of State: 4-11-2011

Certified to be Effective: 4-11-11

Notice Publication Date: 2-1-2011

Rules Amended: 855-080-0021

Rules Repealed: 855-080-0021(T)

Subject: Controlled Substances Schedule I is revised to include certain synthetic cannabinoids and cathinone-type derivatives that are subject to abuse, and have no legitimate medical purpose.

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

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

855-080-0021 Schedule I

(1) Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in 21CFR part 1308.11, and unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) 1,4-butanediol;

(b) Methamphetamine, except as listed in OAR 855-080-0022;

(c) Substituted derivatives of cathinone and methcathinone that are not listed in OARs 855-080-0022 through 0026 (Schedules II through V) or are not FDA approved drugs, including but not limited to,

(A) Methylmethcathinone (Mephedrone);

(B) Methylenedioxypropylvalerone (MDPV);

(C) Methylenedioxymethylcathinone (Methylone);

(D) 2-Methylamino-3',4'-(methylenedioxy)-butyrophenone (Butylone);

(E) Fluoromethcathinone (Flephedrone);

(F) 4-Methoxymethcathinone (Methedrone).

(2) Schedule I also includes any compounds in the following structural classes (2a–2g) and their salts, that are not FDA approved drugs, unless specifically excepted or when in the possession of an FDA registered manufacturer or a registered research facility, or a person for the purpose of sale to an FDA registered manufacturer or a registered research facility:

(a) Naphthylindoles: Any compound containing a 3-(1-naphthyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to: JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, and AM-2201;

(b) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to: JWH-167, JWH-250, and JWH-251;

(c) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to: RCS-4, RCS-8 and AM-694;

(d) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples of this structural class include but are not limited to: CP 47,497 and its C8 homologue (cannabicyclohexanol);

(e) Naphthylmethylindoles: Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(f) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(g) Naphthylmethylindenes: Any compound containing a 1-(1-naphthylmethyl)indene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.

(3) Schedule I also includes any other cannabinoid receptor agonist that is not listed in OARs 855-080-0022 through 0026 (Schedules II through V) or is not an FDA approved drug.

(4) Exceptions. The following are exceptions to subsection (1) of this rule:

(a) 1, 4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of its sale to a legitimate manufacturer of industrial products and the person is in compliance with the Drug Enforcement Administration requirements for List I Chemicals;

(b) 1,4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of the legitimate manufacture of industrial products;

(c) Marijuana and delta-9-tetrahydrocannabinol (THC).

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.035, 475.059 & 475.065

Hist.: PB 4-1987, f. & ef. 3-30-87; PB 8-1987, f. & ef. 9-30-87; PB 10-1987, f. & ef. 12-8-87; PB 15-1989, f. & cert. ef. 12-26-89; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 4-2000, f. & cert. ef. 2-16-00; BP 9-2000, f. & cert. ef. 6-29-00; BP 2-2002(Temp), f. & cert. ef. 2-4-02 thru 7-31-02; BP 3-2002(Temp), f. & cert. ef. 3-1-02 thru 8-23-02; BP 4-2002, f. & cert. ef. 6-27-02, cert. ef. 7-1-02; BP 5-2002, f. & cert. ef. 11-14-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 1-2007, f. & cert. ef. 6-29-07; BP 8-2010, f. & cert. ef. 6-29-10; BP 10-2010(Temp), f. & cert. ef. 10-15-10 thru 4-11-11; BP 2-2011, f. & cert. ef. 4-11-11

Bureau of Labor and Industries Chapter 839

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2011.

Adm. Order No.: BLI 2-2011

Filed with Sec. of State: 3-25-2011

Certified to be Effective: 4-1-11

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:

(a) Amendments/Corrections to Oregon Determination 2011-01 (effective April 1, 2011).

(b) Amendments/Corrections to January 1, 2011 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective April 1, 2011).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in*

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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 or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00, cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02, cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02, cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04, cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06, cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06, cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. & 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07, cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07, cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07, cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09; BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09; 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; BLI 2-2011, f. 3-25-11, cert. ef. 4-1-11

Columbia River Gorge Commission Chapter 350

Rule Caption: Amending existing rules to clarify and streamline processes for commission and users.

Adm. Order No.: CRGC 1-2011

Filed with Sec. of State: 3-23-2011

Certified to be Effective: 5-1-11

Notice Publication Date: 1-1-2011

Rules Adopted: 350-040-0055, 350-060-0047, 350-070-0046, 350-081-0017

Rules Amended: 350-030-0015, 350-030-0020, 350-030-0025, 350-030-0030, 350-030-0060, 350-030-0080, 350-040-0010, 350-040-0020, 350-040-0050, 350-040-0060, 350-040-0065, 350-040-0070, 350-040-0080, 350-050-0020, 350-050-0035, 350-050-0040, 350-050-0045, 350-050-0060, 350-050-0070, 350-050-0080, 350-050-0085, 350-050-0090, 350-050-0100, 350-060-0040, 350-060-0042, 350-060-0045, 350-060-0050, 350-060-0055, 350-060-0060, 350-060-0070, 350-060-0080, 350-060-0100, 350-060-0110, 350-060-

0120, 350-060-0130, 350-060-0160, 350-060-0170, 350-060-0190, 350-060-0200, 350-060-0205, 350-060-0210, 350-070-0040, 350-070-0042, 350-070-0045, 350-070-0050, 350-070-0070, 350-070-0080, 350-070-0090, 350-070-0120, 350-070-0170, 350-070-0200, 350-070-0210, 350-070-0220, 350-070-0225, 350-081-0020, 350-081-0082, 350-081-0540, 350-081-0560, 350-081-0570, 350-081-0580, 350-081-0590, 350-120-0050

Rules Repealed: 350-120-0025, 350-120-0030, 350-120-0040

Subject: Changes to All Rules except 350-81 were made to clarify and streamline internal Commission processes and process for users of Commission rules. These changes are needed to reduce workload for Commission staff as a result of its significantly reduced budget during the past biennium and going forward. Changes to rule 350-81 are required by remand from the Oregon Court of Appeals and Oregon Supreme Court and were the result of settlement discussions in another pending litigation matter. Interested persons may contact the Commission Office for copies of the relevant court decisions. There is no settlement agreement. These changes resulting from the court decisions have already been adopted into the management plan for the National Scenic Area and received the concurrence of the Secretary of Agriculture. The changes resulting from the settlement discussions are procedural for users and commission staff.

Rules Coordinator: Nancy A. Andring—(509) 493-3323, ext. 221

350-030-0015

Civil Penalty

(1) Any person who willfully violates any of the following may incur a civil penalty:

- PL. 99-663;
- The management plan;
- A land use ordinance;
- An implementation measure; or
- Any order issued by the Commission or the Director.

(2) The Commission may not assess a civil penalty under section 15(a)(3) of P.L. 99-663 unless it provides notice and an opportunity for a public hearing to the person that the Commission alleges to have violated one of the measures listed in subsection (1) of this section.

(3) Each day of continuing violation is a separate and distinct violation.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0020

Investigation

(1) The Director shall investigate alleged violations of the measures listed in subsection 1 of 350-30-015 of this Division.

(2) The Director may inspect the subject property if necessary to conduct an investigation under subsection (1) of this section.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0025

De Minimis Violation

If the Director believes a violation has occurred but it is of a de minimis nature, readily correctable, not repeated and with cooperative parties, the Director should work with the landowner to resolve the matter through a new development review application, modification or removal of a building or structure, or other appropriate means. The Director shall periodically report to the Commission about resolutions to de minimis violations.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0030

Notice of Alleged Violation

(1) If the violation is not de minimis, the Director shall serve written notice of violation on the alleged violator by personal service or by registered or certified mail. The notice shall include:

- A plain statement describing the alleged violation;

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(b) The provision of P.L. 99-663, the management plan, the land use ordinance, the implementation measure or the order alleged to have been violated;

(c) The legal and common description of the subject property;

(d) The proposed disposition of the matter through either 350-30-050 through 350-30-060 or 350-30-070 including the recommended penalty to be imposed (if any) and the criteria from 350-30-090 upon which the penalty is based;

(e) A statement that the alleged violator shall file an answer within 14 days after receipt of the notice of violation;

(f) A copy of 350-30-040 which prescribes how to file an answer; and

(g) A statement that if resolution is not reached through 350-30-050 through 350-30-060 the Commission will consider the alleged violation at a contested case hearing which may result in the entry of a final order imposing a civil penalty based upon a prima facie case made on the record, whether or not the alleged violator participates.

(2) Service shall be deemed complete three days after written notice is mailed to:

(a) The alleged violator; or

(b) Any person designated by law as competent to receive service of a summons or notice for the alleged violator.

(3) Notice sent by registered or certified mail to a person at the last known address of the person is presumed to have reached the person within three days after mailing.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0060

Hearing on Proposed Resolution through Agreement

The hearing shall be conducted using the following procedure:

(1) The Director shall provide a brief summary of the nature of the case, the proposed resolution and the key legal issues.

(2) The Director shall provide any other information required along with his recommendation.

(3) The alleged violator or the alleged violator's representative shall be given a reasonable opportunity to be present and to address the Commission.

(4) The Commission may request further information from the Director or the alleged violator.

(5) The Commission shall decide whether to accept, reject or modify the proposed resolution.

(6) If rejected, the matter shall be reset for a contested case hearing under 350-30-070.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-030-0080

Order

(1) The Commission shall issue a final order. The order shall be served by personal delivery or certified or registered mail. If served by mail, the order shall be deemed received three days after mailing.

(2) The order shall specify:

(a) The resolution of the violation (including any consent decree);

(b) Whether a penalty is imposed and the amount of such penalty; and

(c) Any other conditions or requirements.

(3) The order shall be final for purposes of judicial review.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1988, f. 5-16-88, cert. ef. 5-17-88; CRGC 2-1995, f. 7-28-95, cert. ef. 9-1-95; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0010

Definitions

Reserved

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0020

Authority

(1) Consideration of requests to revise urban area boundaries is a discretionary action authorized by section 4(f) of the Act. The Act does not entitle a county, or any person or entity, to have the Commission review a request to revise any urban area boundary, and does not contain time

requirements for consideration of a request. The Commission may make "minor revisions" to the boundaries of an Urban Area .

(2) Three procedural requirements are included in Section 4(f)(1) of the Scenic Area Act:

(a) Requests to revise an Urban Area boundary are submitted to the Commission by a county government;

(b) The Commission must consult the Secretary of Agriculture before revising an Urban Area boundary; and

(c) Two-thirds of the Commission members, including a majority of the members appointed from each state, must approve a revision of an Urban Area boundary. In the event of recusal, the doctrine of necessity shall apply.

(3) Section 4(f)(2) of the Scenic Area Act allows the Commission to revise the boundaries of an Urban Area only if the following criteria are satisfied:

(a) A demonstrable need exists to accommodate long-range urban population growth requirements or economic needs consistent with the Management Plan;

(b) Revision of Urban Area boundaries is consistent with the standards established in Section 6 and the purposes of the Scenic Area Act;

(c) Revision of Urban Area boundaries will result in maximum efficiency of land uses within and on the fringe of existing Urban Areas; and

(d) Revision of Urban Area boundaries will not result in the significant reduction of agricultural lands, forest lands, or open spaces.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09; CRGC 2-2009, f. 3-17-09, cert. ef. 5-1-09; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0050

Submission and Acceptance of Application

(1) A county government shall submit an application to revise the boundary of an Urban Area to the Commission office. Fifteen copies of each application are required after the Executive Director determines the application is complete. Only two copies of the large scale maps are required.

(2) The Director shall review the application for completeness and adequacy and notify the applicant in writing of any deficiencies.

(3) The Executive Director shall not accept an application as complete until all omissions and deficiencies noted by the Executive Director are corrected.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0055

Work Plan

The Commission shall adopt a work plan for each application to revise an urban area boundary. The work plan should contain an estimate of the time and steps needed to review the application, which may vary among applications depending on Commission staffing, budget and resources, and other agency work. At a minimum, the work plan shall include the steps and time periods in sections 060 through 090 in this division. The start date, steps, and time periods shall be set considering commission staffing level, budget and resources, other agency work, and adequate time for public review. The work plan is only an estimate; the Executive Director may require information or procedure not listed in the work plan; skip procedures and information requirements listed in the workplan; or lengthen or shorten time to complete steps in the workplan without permission from the Commission.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0060

Notice of Application

(1) The Executive Director shall send electronic or paper notice of the completed application to the U.S. Forest Service-National Scenic Area Office, States of Oregon and Washington, all four Indian tribal governments, the six Gorge county planning offices, appropriate city planning offices, and interested parties who have requested notice.

(2) The Executive Director shall publish notice of the application in local Gorge newspapers serving the National Scenic Area as well as a major newspaper in Portland and a major newspaper in Vancouver.

(3) The complete application shall be available for inspection at the Commission office during normal office hours.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

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Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0065

Public Comment

Interested persons shall have no less than 30 days from the date the notice is sent to submit written comments to the Executive Director. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0070

Report of the Executive Director

The Executive Director shall prepare a report analyzing the proposed Urban Area boundary revision, and which may include recommendations.

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC1-1999, f. & cert. ef. 10-14-99; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-040-0080

Hearings

(1) The Commission will conduct a hearing on every application accepted as complete by the Director.

(2) The Commission shall provide 20 days notice of the hearing to interested parties and the public.

(3) The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues:

(a) The applicant may present the basis for the urban area boundary revision.

(b) Federal, state, county, tribal and other government officials may participate through submission of oral or written comments.

(c) The public may participate through submission of oral or written comments.

(d) After those who participate in the hearing on behalf of the government or the public are finished, the applicant shall have the opportunity to respond to the comments presented.

(e) After all presentations are complete, the Commission shall deliberate on the proposed urban area boundary revisions.

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-1992(Temp), f. & cert. ef. 2-6-92; CRGC 4-1992, f. & cert. ef. 5-8-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0020

Authority

(1) Consideration of amendments to the Management Plan is a discretionary action authorized by section 6(h) of the Act. The Act does not entitle any person or entity to have the Commission review an application to amend the Management Plan, and does not contain time requirements for consideration of a request.

(2) The Act allows only the Commission to adopt a plan amendment:

(a) If the Commission determines at any time that conditions within the Scenic Area have significantly changed; and

(b) If the Commission approves the plan amendment by a majority vote of the members appointed, including approval by at least three members from each state. In the event of recusal, the doctrine of necessity shall apply.

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC1-1999, f. & cert. ef. 10-14-99; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09; CRGC 2-2009, f. 3-17-09, cert. ef. 5-1-09; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0035

Matters Not Constituting a Plan Amendment

(1) The Executive Director and Area Manager may jointly correct any typographical, grammatical, cross-reference, mapping discrepancies (such as land use designation boundaries that differ from property lines when the intent to follow property lines is clear) created by using maps with different and coarse scales, or other similar error contained in the Management Plan that does not change the substantive provisions of the Management Plan.

(2) The Executive Director and Area Manager shall report such changes to the Commission at a regularly noticed meeting. The meeting

agenda shall include notice of a report under this section. For such changes, the Commission shall not be required to amend the Management Plan as provided in this division of the Commission's rules, nor seek concurrence by the Secretary of Agriculture.

(3) A correction shall be considered a final action for the purpose of judicial review at the time the Executive Director and Area Manager report the correction to the Commission.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 USC 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0040

Origin of Applications

(1) Any person may request that the Commission initiate a legislative amendment to the Management Plan.

(2) Any person may apply for a quasi-judicial amendment to the Management Plan. All owners of parcels to which the proposal applies shall give written consent to the application.

(3) For the purpose of this division of the Commission Rules, a quasi-judicial amendment shall be one that proposes to change the land use designation, recreation intensity class or landscape setting on one or any clearly identifiable set of parcels that share a similar set of facts, and the change does not establish new policies, or one that proposes to change policy that would apply to one or a small number of clearly identifiable parcels that share a similar set of facts. All other amendments shall be considered a legislative amendment.

(4) The Executive Director shall determine whether the proposal is for a legislative or a quasi-judicial amendment. The Executive Director may make this determination prior to or at the pre-application conference.

Stat. Auth.: ORS 196.150 & RCW 43.97.015
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0045

Pre-Application Conference Required for Quasi-Judicial Plan Amendment

(1) Prior to submitting any application for a quasi-judicial plan amendment to the Management Plan, an applicant shall attend a pre-application conference with the Executive Director.

(2) The applicant shall submit a statement of the proposed change to the land use designation, landscape setting, or recreation intensity class or policy change and the purpose for which the changes are sought. Proposals for quasi-judicial amendments shall include a list of all parcels to which the proposal applies and the names and addresses of the owners of the parcels. The Executive Director may request the applicant submit additional information about the proposal prior to scheduling a pre-application conference.

(3) The Executive Director shall schedule a pre-application conference after the applicant submits all additional information that the Executive Director requests. The Executive Director shall hold the pre-application conference within a reasonable period of time after receipt of the additional information. The Executive Director shall notify the following persons of the pre-application conference:

(a) The applicant;

(b) For quasi-judicial amendments, the owners of all parcels to which the proposal applies;

(c) Representatives of the USDA Forest Service, the county or counties where the subject parcel or parcels are located, the four Indian Tribes with treaty rights in the National Scenic Area, and appropriate state agencies; and,

(d) Any other person the Executive Director believes may have an interest in the proposal or requests notice of the pre-application conference.

(4) The Commission may charge a fee for holding a pre-application conference. The Commission shall set the fee. The Commission shall hold a public hearing before establishing a fee for pre-application conferences.

(5) The purpose of the pre-application conference is to assist the applicant to complete the Plan Amendment process successfully and expeditiously, identify possible practicable alternatives, identify issues that concern the Commission and other agencies and interested persons, determine what information would be necessary for the Executive Director to review the application, give an estimated schedule for considering the application, and identify possible conditions of approval.

(6) The Executive Director shall issue a pre-application conference report, which shall summarize the discussion at the conference and shall contain a preliminary list of information necessary to review the applica-

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tion. The list of necessary information shall be as comprehensive as reasonably possible, but shall not be exclusive.

(7) The Executive Director may require an applicant to attend a new pre-application conference if the application submitted is materially different from the proposal discussed at the pre-application conference, or conditions in the Scenic Area have materially changed.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 USC 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0060

Processing of Applications and Requests

(1) Applications for quasi-judicial amendments shall be reviewed upon receipt and in the order in which they are received, except that the Commission may, as part of its work planning, set a limit on the number of quasi-judicial applications it will process during the biennium and may set its limit at zero. Applications shall be reviewed pursuant to sections 070 through 120 of this division.

(2) The Executive Director shall track requests for legislative amendments. The Commission shall review requested legislative amendments at least once each biennium and determine which, if any, to handle as an application to amend the Management Plan. In determining which legislative amendments to handle, the Commission may consider such factors as: whether the issue has been the subject of appeals, whether the issue has been an implementation problem, whether the issue is a priority of federal, state, local, or tribal governments, and availability of data and resources necessary to analyze the issue. The Commission shall solicit public comment during its work planning concerning legislative amendments to initiate. The decision to initiate a legislative amendment is at the sole discretion of the Commission.

(3) The Executive Director shall process a legislative amendment pursuant to sections 080 through 120 of this division.

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

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2009(Temp), f. & cert. ef. 1-14-09 thru 5-15-09; CRGC 2-2009, f. 3-17-09, cert. ef. 5-1-09; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0070

Acceptance of Quasi-Judicial Plan Amendment Application

(1) The Executive Director shall review the application for completeness and notify the applicant in writing of any deficiencies, and any additional information that is required as provided in 350-50-050(1)(f).

(2) The Executive Director shall not accept an application as complete until the applicant corrects all deficiencies and submits all additional information noted by the Executive Director.

(3) The applicant shall submit 15 copies of the application after the Executive Director determines the application is complete.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0080

Notice of Application for Quasi-Judicial Plan Amendment or Proposal for Legislative Amendment

(1) The Executive Director shall send public notice of a quasi-judicial plan amendment or a proposal for a legislative amendment to the U.S. Forest Service — National Scenic Area Office; appropriate state agencies; all four Indian tribal governments; the six Gorge county planning offices.; interested parties who have requested notice; and for quasi-judicial applications, all landowners within 200 feet of the boundaries of all parcels to which the proposal applies. The notice shall specify the due date for comment.

(2) The Executive Director shall publish notice of a quasi-judicial plan amendment application in a newspaper serving the community where the parcels to which the proposal would apply are located. The Executive Director shall publish notice of a legislative plan amendment proposal in one or more local newspapers serving the geographic area(s) that the amendment would affect.

(3) For all plan amendments, the Executive Director shall give electronic notice to all persons that receive electronic notice of commission meetings.

(4) The complete application or proposal shall be available for inspection at the Commission office during normal office hours.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0085

Public Comment

(1) Interested persons may submit written comments to the Executive Director within the time specified in the notice. Written comments should address whether the proposed amendment is consistent with the purposes and standards of the Scenic Area Act, the criteria in Section 6(h) of the Scenic Area Act and this rule.

(2) The Commission shall provide copies of the written comments submitted during the comment period to the applicant prior to or with the staff report to enable the applicant to address the comments at the hearing.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0090

Report of the Executive Director

(1) The Executive Director shall prepare a staff report, which may include recommendations. The report will analyze the proposed amendment based on the criteria of the Scenic Area Act and Rule 350-50-030.

(2) For legislative amendments, the Executive Director shall include recommended plan amendment language in the staff report.

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-050-0100

Hearing

(1) The Commission shall conduct a hearing on the proposed plan amendment after the Executive Director issues the report and there has been a minimum of 30 days for public review of the report.

(2) The Commission shall provide 20 days notice of the hearing to all persons who received the notice of a quasi-judicial plan amendment application, and any person who submitted comment on the application. The notice of the proposed plan amendment may include the notice of hearing.

(3) The hearing shall take place as follows, noting the Chair may provide specific direction for the conduct of the hearing related to the time allowed for presentations and similar procedural issues.

(a) The Executive Director shall present the staff report. The Commission may ask questions concerning the staff report.

(b) The applicant for a quasi-judicial plan amendment shall present the proposed plan amendment.

(c) Interested persons may present oral or written comments.

(d) Following testimony from interested persons, the applicant shall have the opportunity to respond to the comments presented.

(e) After all presentations are complete, the Chair shall close the public hearing, and the Commission shall deliberate and vote on the proposed plan amendment.

(f) The Commission may attach conditions of approval necessary to ensure the proposed plan amendment complies with the criteria for approval.

(g) The Commission shall determine if the amendment as approved is mandatory for counties to adopt into their land use ordinances. Unless otherwise specified by the Commission, amendments to county land use ordinances shall follow the procedures established in Sections 7 and 8 of the Scenic Area Act (16 U.S.C. §§ 544e and 544f).

Stat. Auth.: ORS 196.150 & RCW 43.97.015

Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.

Hist.: CRGC 3-1992(Temp), f. & cert. ef. 4-16-92; CRGC 5-1992, f. & cert. ef. 7-1-92; CRGC 1-1999, f. & cert. ef. 10-14-99; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0040

Definitions

In these rules, unless the context or subject matter requires otherwise:
(1) "Applicant" means the person who requested that the governing body take an action which resulted in a land use decision.

(2) "Commission" means the Columbia River Gorge Commission.

(3) "Counties" means Multnomah, Hood River and Wasco counties, Oregon; and Clark, Skamania and Klickitat counties, Washington.

(4) "Days" means calendar days.

(5) "File" means to deliver to Commission offices by personal delivery, U.S. Postal mail, or email. Unless otherwise specified, a document shall be considered filed on the date that it is personally delivered, mailed

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or emailed. A document that is emailed prior to midnight on the due date shall be considered filed on that due date.

(6) "Final decision": A decision is final when it is reduced to writing and bears the necessary signatures of the governing body decisionmaker(s).

(7) "Governing body" means a county governing body.

(8) "Land use decision" means a final decision by the governing body of a county in the National Scenic Area based on the National Scenic Act.

(9) "Notice" means the Notice of Appeal and refers to the document that must be filed with the Commission in order to begin an appeal.

(10) "Party" means the appellant, the governing body, the applicant (if different than the appellant), and any intervenor.

(11) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Commission. A person shall include the Executive Director of the Gorge Commission in his or her official capacity.

(12) "Serve" or "Service" means to send with the United States Postal Service by first class mail or to deliver in person, or to send by email, a copy of the original to all parties, including intervenors and persons who have a pending motion to intervene before the Commission. All documents served on the other parties shall include a certification that the document was served on the same date that the document was filed. **(Exhibit 4)**.

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

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0042

Delegation of Authority to the Chair of the Commission

(1) Where these rules refer to the Chair of the Commission, the Commission has delegated authority to the Chair or presiding officer designated by the Chair to act on those matters for the Commission, including but not limited to, procedural orders on behalf of the Commission relating to case setting, requests for intervention, preliminary motions, motions to dismiss, and other procedural matters. The Chair of the Commission may also act on other matters specified for Commission action when the context indicates action by the Chair of the Commission or when action by the full Commission would be impracticable.

(2) The Chair of the Commission shall decide matters without oral argument, unless the Chair desires an oral hearing. The decision of the Chair of the Commission or presiding officer pursuant to this authority shall be final and not reviewable by the full Commission. The Chair of the Commission may also choose, at his or her sole discretion, to bring a matter to the full Commission for decision.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0045

Time

(1) Computation: In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated time period begins to run shall not be included and the last day of the time period shall be included.

(2) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period of time after service of a document, and the service of the document is by mail, three (3) days shall be added to the prescribed time period. This does not apply to documents mailed when filing and service is accomplished by email.

(3) When a deadline for accomplishing some act under these rules falls on a weekend or legal holiday, the deadline shall be the next business day, and all following deadlines shall be calculated from that deadline. A legal holiday shall be any day in which the United States Postal Service does not deliver mail, or when the Gorge Commission is closed for business.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0047

Electronic Filing and Service

(1) The Commission allows filing of all documents by electronic mail (email) to the Commission's Office. All documents shall be emailed to crgc@gorgecommission.org, and shall have a subject heading that clearly identifies the email as filing a document and that clearly identifies the appeal by caption and/or appeal number. The Commission allows email fil-

ing even if a party opts out of email service. A party need not file a document by mail if that party has already filed the document by email.

(2) All documents may be served by email to parties and persons that do not opt out of email service (see rules below for Notice of Appeal and Notice of Appearance). Parties filing a Notice of Appeal are encouraged to communicate with parties and persons who are entitled to receive a copy of the Notice of Appeal about electronic service of the Notice of Appeal.

(3) The preferred format for filed and served documents shall be a searchable portable document format (.pdf). Color originals available electronically, or easily able to be scanned in color shall be filed and served in color. Requirements for color covers or fastening of documents shall not apply to documents filed or served by email.

(4) The Commission understands that parties' and persons' computers and internet service may display times that vary by several minutes, and have different technological capabilities. Parties and persons filing and serving documents by email should communicate with each other to ensure that the documents can be received and read. The Commission will apply the rules in this chapter in the interest of promoting full participation in an appeal, resolving the appeal in an expeditious manner, and to promote justice in disputes concerning email filing and service such as whether a document was timely filed; timely served; should have been filed or served by email; whether and when the document was received; and whether the document was sent in a readable format. In resolving disputes over electronic service, the Commission will consider whether the parties made good faith efforts to communicate about electronic mail service and whether parties attempted to resolve the dispute without involving the Commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0050

Notice of Appeal

(1) Filing: Except as provided in 350-60-240 below, an appellant shall file a Notice of Appeal at the Commission office on or before the 30th day after the date the decision sought to be appealed becomes final. Except as provided in 350-60-240 below, a Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Appeal: The Notice of Appeal shall be served on the governing body, the governing body's legal counsel, the applicant, the applicant's legal counsel, and all persons identified in the Notice as required by subsection (3)(h) of this rule on or before the date the Notice of Appeal is filed.

(3) Contents of Notice of Appeal: The Notice of Appeal shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as appellant(s); the name of the governing body, identifying the governing body as respondent; and if the appellant is not the applicant, the name of the applicant, identifying the applicant as respondent;

(b) Adjacent to the caption the heading "Notice of Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the decision to be reviewed;

(f) A brief "ADR Statement" stating whether the appellant is willing to attempt to resolve the case through alternative dispute resolution ("ADR"), including but not limited to mediation. This statement shall not be used to argue the merits of the appeal.

(g) A statement whether the appellant is willing to consider a shortened record in accordance with 350-60-060(f).

(h) The name, address, email address, and telephone number of each of the following:

(A) The Appellant. If the appellant is not represented by an attorney, the appellant's name, address, email address, and telephone number shall be included. If an attorney represents the appellant, the attorney's name, address, email address, and telephone number shall be substituted for that of the appellant.

(B) The governing body and the governing body's legal counsel;

(C) The applicant, if any (and if other than the appellant). If an applicant was represented by an attorney before the governing body, the applicant's contact information may be omitted and the name and contact information of the applicant's attorney shall be included;

(D) Any other person to whom written notice of the land use decision was mailed as shown on the governing body's records. The telephone number and email address may be omitted for any such person.

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(i) A statement advising all persons other than the governing body and applicant, that in order to participate in the review proceeding a person must file at the Commission office and serve a motion to intervene pursuant to 350-60-160.

(j) A statement advising all persons other than the governing body and applicant, that in order to present oral argument at the hearing before the Commission, a person must intervene and file a brief pursuant to 350-60-120(1).

(k) A statement informing all parties and persons whether the party filing the Notice of Appeal opts out of email service, and a statement informing parties and persons that service of documents may be by email unless a party or person expressly opts out of receiving documents by email.

(l) Proof of service upon all persons required to be named in the Notice. See **Exhibit 1**.

(4) Filing Fee and Deposit for Costs: The Columbia River Gorge Commission may charge a filing fee and deposit. Filing fees and deposits, if any, shall be set by the Gorge Commission's Executive Director and shall not exceed the average cost to the Commission of handling appeals under this rule.

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

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0055

Respondents' Notice of Appearance

Within 14 days after filing of a Notice of Appeal, a respondent shall file at the Commission office and serve a "Notice of Appearance" stating whether the respondent is willing to attempt to resolve the case through alternative dispute resolution means, and whether the respondent opts out of email service of all documents. Note that the respondent must affirmatively opt out of email service. This Notice of Appearance shall not be used to argue merits of the appeal.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0060

Record

(1) Contents of Record: The record on appeal from a governing body shall include the following:

(a) The final decision including findings of fact and conclusions of law;

(b) All testimony and all exhibits, maps, documents or other written materials included as part of the record during the course of the governing body's proceeding.

(c) Photos, maps, and exhibits that were presented to the governing body in color shall be provided to the Commission in color in the original or certified copy of the record;

(d) Minutes of the meetings conducted by the governing body as required by law. A verbatim transcript of audiotape recordings shall not be required, but if a transcript has been prepared, it shall be included.

(e) The governing body may retain the audiotape recording, any large maps, or exhibits and documents which are difficult to duplicate, until the date of oral argument. The governing body shall make these items reasonably available for inspection and duplication by the parties during the pendency of the appeal, and shall specify in its filing of the record the available times and procedure for reviewing for these items.

(f) The Gorge Commission encourages parties to stipulate to a shortened record.

(A) A shortened record may eliminate duplicates of documents, letters that do not include substantive information, documents related to issues that are not being appealed, or other documents that the parties do not believe are necessary for the Gorge Commission to decide the issues raised in the appeal.

(B) Notwithstanding subsection (2)(A) above, a shortened record shall include the documents referred to in subsections (1)(a) and (d) above, and any document submitted in a shortened record shall comply with subsection (1)(c) and (e) above.

(C) A shortened record may be submitted only as agreed upon by all parties. The record shall contain any document that one or more parties desires to include in the record.

(D) Any party that desires to refer to a document that was eliminated by agreement of the parties in a shortened record may at any time file at the Commission office and serve a motion to supplement the record with that

document, and shall include the document as part of its motion. A motion to supplement the record under this section shall comply with 350-60-130.

(E) The shortened record shall be considered the complete record before the Gorge Commission for the purpose of any judicial review of the Gorge Commission's decision.

(2) Filing of Record: Within 30 days after the Notice of Appeal is filed, the governing body shall file at the Commission office a certified paper copy or an electronic copy of the record of the proceeding under review. Approximately 30 days prior to the date of oral argument, the Commission will contact the governing body and request paper copies of the record, which the governing body shall provide to the Commission office no later than 14 days prior to the date of oral argument. The number of paper copies of the record will depend on the number of members of the Gorge Commission that request a paper copy.

(3) Service of Record: Contemporaneously with filing the record at the Commission office, the governing body shall serve a copy of the record, exclusive of audiotape recordings, large maps and other exhibits and documents that are difficult to duplicate, on the appellant, the applicant, and all other parties, including intervenors. If intervention is granted after the record is filed and served, then the governing body shall serve a copy of the record as soon as possible after intervention is granted. The governing body may provide the record to parties in an electronic form.

(4) Specifications of Record:

(a) The record shall:

(A) Include a cover bearing the title of the case as it appears in the Notice, and the Commission's numerical designation for the case, and shall indicate the numerical designation given the land use decision by the governing body;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2), and listing each audiotape recording, large map or other exhibit or document retained by the governing body;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

(F) Indicate whether it is a shortened record. The governing body is not required to indicate documents that were excluded by stipulation of all parties to produce the shortened record.

(b) A record which does not conform to the preceding requirements shall not be accepted by the Commission.

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

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0070

Objections to the Record

(1) Before filing an objection to the record, a party shall attempt to resolve the matter with the governing body.

(2) An objection to the record shall be filed at the Commission office and served within 10 days following service of the record on the party filing the objection. The party filing the objection to the record shall certify that the objection is made in good faith, that the objection is material, that the objection was not made for the purpose of delay, and that he or she has contacted the governing body and attempted to resolve the objection. Objections may be made on the following grounds:

(a) The record does not include all materials included as part of the record during the proceedings before the governing body. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included as part of the record during the proceedings before the governing body. The item(s) not included as part of the record during the proceedings before the governing body shall be specified, as well as the basis for the claim that the item(s) are not part of the record.

(c) The minutes do not accurately reflect the proceedings, or the transcripts of the meetings or hearings are incomplete.

(3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Chair of the Commission shall require the governing body to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding

ADMINISTRATIVE RULES

contested minutes is in an audiotape recording, a transcript of the relevant portion shall be submitted.

(4) The Chair of the Commission may conduct a telephone conference with the parties to consider any objections to the record.

(5) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Chair of the Commission shall issue a letter or order declaring the record settled and setting forth the schedule for subsequent events. Unless otherwise provided by the Chair of the Commission, the date of the Chair's letter or order shall be deemed the date that the record is settled for purposes of computing subsequent time limits. A letter or an order of the Chair settling the record is not appealable to the full Commission.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0080

Appellant's Brief

(1) Filing and Service of Brief: The Appellant's Brief shall be filed at the Commission office and served no later than 30 days after the record is filed, or settled if a party files an objection to the record. Failure to file an Appellant's Brief within the time required by this section shall result in dismissal of the appeal.

(2) Specifications of Brief: The Appellant's Brief shall

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer brief is given by the Chair of the Commission. If a brief exceeding the 50 page limit is filed without permission, the Chair of the Commission shall notify the author and order a time period in which to submit a revised brief satisfying the 50 pages limit.

(c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. An intervenor shall be designated as either appellant or respondent.

(d) If there is more than one appellant, the cover page shall specify the appellant(s) filing the brief.

(e) Be typewritten, in 14-point type in a regularly used font such as Times New Roman, Helvetica, or Calibri, and double spaced;

(f) Be signed on the last page by the author. An electronic brief may contain an electronic signature or other generally accepted substitute.

(3) Contents of Brief: The Appellant's Brief shall

(a) State the facts that establish appellant's standing;

(b) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The nature of the land use decision and the relief sought by the appellant;

(B) A summary of the arguments appearing under the assignments of error in the body of the brief;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found.

(c) State why the challenged decision is a land use decision subject to the Commission's jurisdiction;

(d) Set forth each assignment of error under a separate heading. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

(e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law;

(f) Contain a copy of any management plan provisions, comprehensive plan provision, ordinance or other provision of local law cited in the brief, unless the provision is quoted verbatim in the brief.

(4) Copies of example Appellant's briefs are available at the Commission office for parties to review for form.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0100

Respondent's Brief

(1) Filing and Service of Brief: Respondents shall file at the Commission office and serve a Respondent's brief no later than 20 days after the date the Appellant's Brief is filed.

(2) Specifications of Brief: The Respondent's brief shall conform to the specifications of the Appellant's Brief, except that the brief shall have a red cover. If there is more than one respondent, the cover page shall specify which respondent is filing the brief.

(3) Contents of Brief:

(a) The Respondent's brief shall follow the form prescribed for the Appellant's Brief. The respondent shall specifically accept the appellant's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters. The statement shall be in narrative form with citations to the pages of the record where support for the facts alleged can be found.

(b) The Respondent shall accept or challenge the appellant's statement of the Commission's jurisdiction and the appellant's statement of standing. The basis for any challenge shall be stated. If the respondent contends that the facts alleged by the appellant in support of standing are not true, the respondent shall specify which allegations are contested.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0110

Reply Brief

A reply brief may not be filed.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0120

Oral Argument

(1) The hearing before the Commission shall be on the record submitted by the county, as long as the county has based its decision upon a record made at an adjudicative hearing open to participation by persons adversely affected or aggrieved. Only parties who have submitted briefs shall be allowed to present oral argument to the Commission.

(2) If the county did not base its decision upon a record made in an adjudicated hearing open to participation by persons adversely affected or aggrieved, then anyone adversely affected or aggrieved may participate in a hearing before the Commission.

(3) If a party waives the right to present oral argument, the Commission shall consider the case based on that party's brief and the brief and oral arguments presented by other parties. The parties may, with consent of the Commission, stipulate to submit a case to the Commission on briefs without oral argument.

(4) The Commission shall inform the parties of the time and place of oral argument. Unless the Commission otherwise orders, the procedure for oral argument shall be as follows:

(a) Members of the Commission shall have an opportunity to ask questions that they wish the parties to address in their oral arguments.

(b) The appellant(s) shall be allowed 20 minutes for oral argument, which may be divided between the initial presentation and rebuttal, and which shall be uninterrupted by questions asked by members of the Commission. Multiple appellants shall share the twenty minutes for argument.

(c) The respondent(s) shall be allowed 20 minutes to respond, which shall be uninterrupted by questions asked by members of the Commission. Multiple respondents shall share the twenty minutes for argument.

(d) After the parties' uninterrupted arguments, members of the Commission may ask brief questions of the parties concerning the facts of the case, the arguments made, and applicable law. Appellant(s) and respondent(s) shall each have 2 minutes to answer each question, except that the Chair may allow a longer time provided that both sides are afforded the same time to answer the question. Multiple petitioners or respondents shall share the allotted time to answer a question.

(5) The Commission shall audio record all arguments, but any party may also arrange at its own expense to record the argument in a manner that does not delay or disrupt the proceeding.

(6) The governing body shall ensure that all audio recordings, large maps, or exhibits and documents, which were not included in the duplicated record pursuant to 350-60-060(1)(d), are present at the oral argument, even if the governing body chooses not to participate in oral argument. All other parties are encouraged to remind the governing body of this requirement. The governing body shall transmit such items to the Commission at the beginning of the hearing. The Commission shall have broad authority to redress a governing body's failure to transmit such items, including but not

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limited to, postponing the hearing, exclusion of the item from the record before the Commission, or judicial notice of the contents of the record.

(7) The Commission may consult with its staff and counsel regarding facts, legal analysis, issues and matters in the appeal. The Commission may allow, but shall not be required to allow the parties to respond to the staff and counsel's statements to the Commission.

(8) The Commission's rules concerning ex parte contact and appearance of fairness, Commission Rules 350-16-016 and 350-16-017 shall apply.

(9) The Commission shall send a Notice of Hearing in accordance with Commission Rule 350-16, which shall also include a summary of the requirements and procedures for oral argument in this section.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0130

Motions, Generally and Procedural Orders

(1) Any party may submit a motion for action by the Chair of the Commission. For matters not otherwise specified by this division, the Chair of the Commission and all parties shall observe the following procedures for submittal and disposition of motions.

(2) A motion shall be filed at the Commission office by mail, email, or personal delivery.

(3) All contested motions shall be filed not less than 21 days prior to the date of the hearing before the Commission, except for good cause. A party seeking to file a motion less than 21 days prior to the hearing shall consult with all parties about the motion and present with the motion, an agreed schedule for responses. The schedule shall leave no less than 7 days prior to the hearing for the Chair of the Commission to issue an order, unless the Chair of the Commission consents to a shorter period.

(4) The movant shall serve a copy of the motion on all of the parties at the same time that the motion is filed and in the same manner as the motion was filed.

(5) Unless otherwise ordered by the Chair of the Commission, any party has 10 days to file a response to a motion, except that no response shall be filed for uncontested motions. The responding party shall serve a copy of the response on all of the parties at the same time that the response is filed and in the same manner that the response was filed. No party may file a reply to the response(s).

(6) Any motion or response to a motion that does not conform to this subsection shall be rejected.

(7) The Chair of the Commission may provide the parties with a copy of an order on a motion by electronic mail to parties that have not opted out of email service.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0160

Intervention

(1) Standing to Intervene: Any person who appeared before the county may intervene in a review proceeding before the Commission. An intervenor shall be entitled to receipt of all matters requiring service upon the parties beginning on the date the motion to intervene is filed, regardless of whether an objection is filed.

(2) If the county review process is not open to persons adversely affected or aggrieved, any person adversely affected or aggrieved may intervene in a review proceeding before the Commission.

(3) Motion to Intervene: In the interests of promoting timely resolution of appeals, a motion to intervene shall be filed at the Commission office and served within 14 days after the Notice of Appeal is filed. The motion shall be served on all parties to the appeal and, if known, any person who has submitted a motion to intervene as of the date of the motion; the motion need not be served on all persons that the appellant served with the Notice of Hearing. The motion to intervene (exhibit 3) shall:

(a) State whether the party is intervening on the side of the appellant or the respondent;

(b) State the facts which show the party is entitled to intervene, supporting the statement with affidavits, citations to the record or other proof;

(c) Include a brief "Intervenor's ADR Statement" stating whether the proposed intervenor is willing to attempt to resolve the case through alternative dispute resolution means. This statement shall not be used to argue merits of the appeal;

(d) Include a brief statement about whether the proposed intervenor is willing to consider a shortened record in accordance with 350-60-060(f); and

(e) If applicable, a statement opting out of email service (note that a party must affirmatively opt out of email service).

(4) Objections to a motion to intervene shall be filed and served within 7 days of the motion.

(5) The intervenor shall be entitled to participate in developing the record, including shortening the record and filing objections to the record.

(6) The Chair of the Commission may conduct a telephone conference with the parties to consider an objection to a motion to intervene.

(7) The Chair of the Commission shall issue a written decision on the motion to intervene, which shall be served on all the parties. The Chair of the Commission shall not consider the ADR statement for the purpose of deciding whether to grant the motion to intervene.

(8) Intervenor's Brief:

(a) If intervention is sought as an appellant, the brief shall be filed and served within the time limit for filing the Appellant's Brief, and shall satisfy the requirements for the Appellant's Brief in 350-60-080.

(b) If intervention is sought as a respondent, the brief shall be filed and served within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in 350-60-100.

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

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0170

Amicus Participation

(1) A person or organization may appear as amicus only by permission of the Commission on written motion. The motion shall set forth the specific interest of the movant and state reasons why a review of relevant issues would be significantly aided by participation of the amicus. A copy of the motion shall be served on all parties to the proceeding. The motion may include a statement that the amicus party opts out of email service. The Chair of the Commission shall decide motions for amicus participation.

(2) Appearance as amicus shall be by brief only, unless the Commission specifically requests oral argument. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal and shall be filed and served within the time required for filing respondent's brief. An amicus brief shall be submitted at the time the respondent's brief is due unless a later date is authorized by the Chair of the Commission. No filing fee is required. An amicus brief shall have a green cover.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0190

Extensions of Time

(1) In no event shall the time limit for the filing of the Notice of Appeal be extended.

(2) All other time limits may be extended upon written consent of all parties, the Commission's motion or motion of a party.

(3) A motion for extension of time shall state the reasons for granting the extension and must be filed and served within the time required for performance of the act for which an extension of time is requested.

(4) A first motion for extension of time for any act, which requests an extension for no greater than 30 days and is stipulated to by all parties, shall be presumed granted on the date that the motion is filed. The Chair of the Commission shall confirm the extension to the parties.

(5) Any other motion for extension of time that is stipulated to by all parties shall be presumed granted for a period of 14 days, or until the Chair issues an order, whichever is earlier. The Chair of the Commission shall issue an order granting or denying the extension, and may modify the request.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0200

Stays

(1) A motion for a stay of a land use decision shall include:

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(a) A statement setting forth movant's right to standing to appeal the decision;

(b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;

(c) A statement of facts and reasons for issuing a stay, demonstrating a claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;

(d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) Unless otherwise ordered by the Chair of the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(3) The Chair of the Commission shall base a decision on the stay, including the right to a stay, or conditions of any stay order, upon evidence presented. Evidence may be attached to the motion in the form of affidavits, documents or other materials, or presented at an evidentiary hearing which may be convened at the discretion of the Chair of the Commission and follow the process in 350-60-150.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2).

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0205

Dismissal by the Commission

(1) Voluntary dismissal: The Chair of the Commission shall dismiss an appeal upon motion by the Appellant filed or expressed orally to the Commission prior to an oral decision. The dismissal shall be considered with prejudice and shall be effective on the date it is filed or expressed orally to the Commission.

(2) Involuntary Dismissal: The Chair of the Commission may dismiss an appeal upon or without motion by any other party when it appears to the Chair that the Appellant and all intervenors on the side of the Appellant have failed to prosecute the appeal diligently; when the appeal is moot, or any other situation in which continuing the case would be manifestly unjust to the responding parties. The Chair of the Commission shall send a Notice of Intent to Dismiss stating the facts and reason for dismissal. The parties shall have 10 days to respond to the notice, unless the Notice of Intent to Dismiss specifies a longer time.

(3) The Chair of the Commission shall issue and serve on the parties an order of dismissal, which shall be an appealable action of the Commission.

(4) When an appeal is dismissed, the Commission shall make no decision on the merits of the appeal. In the event that the parties have entered into any settlement agreement concerning the issues raised in the appeal, the Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-060-0210

Final Order of Commission

(1) An Order of the Commission shall:

(a) Contain the caption of the appeal and state "Final Opinion and Order";

(b) Acknowledge the record and other documents that were present before the Commission, and findings of fact and conclusions of law and/or an incorporation of findings and conclusions from the record below.

(c) Address the Special Review under Rule 350-60-090, where applicable.

(d) Indicate whether the decision being reviewed is dismissed, affirmed, reversed or remanded;

(e) Contain the date of the final order;

(f) Contain a statement of the right to appeal the Commission's Order in the following or substantially similar form, "NOTICE: You are entitled to judicial review of this order within 60 days of the date of this order, pursuant to section 15(b)(4) of the Scenic Area Act, P.L. 99-663"; and

(g) Be signed by the Chair of the Commission, or his/her delegate.

(2) The final order shall be served on all parties. The parties are not afforded an opportunity to comment on the order before it is made final by the Commission.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Commission may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.

(4) No dissenting opinions by members of the Commission are allowed.

(5) For the purpose of calculating the time for judicial review of the Commission's order, the date of the order shall be the date the order is served on the parties even if that date is later than the date that the order is signed.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-1994, f. 5-4-94, cert. ef. 5-16-94; CRGC 1-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0040

Definitions

In these rules, unless the context or subject matter requires otherwise:

(1) "Applicant" means the person who requested that the Executive Director of the Gorge Commission take an action which resulted in a land use decision.

(2) "Commission" means the Columbia River Gorge Commission.

(3) "Counties" means Multnomah, Hood River and Wasco counties, Oregon, and Clark, Skamania, and Klickitat counties, Washington.

(4) "Days" means calendar days.

(5) "Executive Director" or "Director" means the director of the Gorge Commission.

(6) "File" means to deliver to Commission offices by personal delivery, U.S. Postal mail, or email. Unless otherwise specified, a document shall be considered filed on the date that it is personally delivered, mailed, or emailed. A document that is emailed prior to midnight on the due date shall be considered filed on that due date.

(7) "Final decision": A decision is final when it is reduced to writing and bears the signature of the Executive Director of the Gorge Commission.

(8) "Land use decision" means a final decision by the Executive Director based on the National Scenic Act.

(9) "Notice" means the Notice of Appeal and refers to the document which must be filed with the Commission in order to begin a review proceeding.

(10) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the Commission. A person shall include the Executive Director of the Gorge Commission in his or her official capacity.

(11) "Serve" or "Service" means to send with the United States Postal Service by first class mail or to deliver in person, or to send my email, a copy of the original to all parties, including intervenors. All documents served on the other parties shall include a certification that the document was served on the same date that the document was filed.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0042

Delegation of Authority to the Chair of the Commission

(1) Where these rules refer to the Chair of the Commission, the Commission has delegated authority to the Chair or presiding officer designated by the Chair to act on those matters for the Commission, including but not limited to, procedural orders on behalf of the Commission relating to case setting, preliminary motions, and other procedural matters. The Chair of the Commission may also act on other matters specified for Commission action when the context indicates action by the Chair of the Commission or when action by the full Commission would be impracticable.

(2) The Chair of the Commission shall decide matters without oral argument, unless the Chair desires an oral hearing. The decision of the Chair of the Commission or presiding officer pursuant to this authority shall be final and not reviewable by the full Commission. The Chair of the Commission may also choose, at his or her sole discretion, to bring a matter to the full Commission for decision.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

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350-070-0045

Time

(1) Computation: In computing any period of time prescribed or allowed by these rules, the day of the act from which the designated time period begins to run shall not be included and the last day of the time period shall be included.

(2) Whenever a person has the right or is required to do some act or take some proceedings within a prescribed period of time after service or a document, and the service of the document is by mail, three (3) days shall be added to the prescribed time period. This does not apply to documents mailed when filing and service is accomplished by email.

(3) When a deadline for accomplishing some act under these rules falls on a weekend or legal holiday, the deadline shall be the next business day, and all following deadlines shall be calculated from that deadline. A legal holiday shall be any day in which the United States Postal Service does not deliver mail, or when the Gorge Commission is closed for business.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0046

Electronic Filing and Service

(1) The Commission allows filing and service of all documents by electronic mail (email) to the Commission's Office. All documents to be filed or served shall be emailed to crgc@gorgecommission.org, and shall have a subject heading that clearly identifies the email as filing a document or serving a document and that clearly identifies the appeal by caption and/or appeal number. The Commission allows email filing even if a person opts out of email service. A person need not file a document by mail if that person has already filed the document by email.

(2) All documents may be served by email to persons that do not opt out of email service (see rules below for Notice of Appeal and Notice of Appearance). Persons filing a petition for review are encouraged to communicate with persons who are entitled to receive a copy of the Notice of Appeal about electronic service of the Notice of Appeal.

(3) The preferred format for filed and served documents shall be a searchable portable document format (.pdf). Color originals available electronically, or easily able to be scanned in color shall be filed and served in color. Requirements for color covers or fastening of documents shall not apply to documents filed or served by email.

(4) The Commission understands that persons' computers and internet service may display times that vary by several minutes, and have different technological capabilities. Persons filing and serving documents by email should communicate with each other to ensure that the documents can be received and read. The Commission will apply the rules in this chapter in the interest of promoting full participation in an appeal, resolving the appeal in an expeditious manner, and to promote justice in disputes concerning email filing and service such as whether a document was timely filed; timely served; should have been filed or served by email; whether and when the document was received; and whether the document was sent in a readable format. In resolving disputes over electronic service, the Commission will consider whether persons made good faith efforts to communicate about electronic mail service and whether persons attempted to resolve the dispute without involving the Commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0050

Notice of Appeal

(1) Filing: A person wishing to appeal a decision by the Director shall file a Notice of Appeal at the Commission office on or before the 30th day after the date the decision sought to be appealed becomes final. A Notice filed thereafter shall not be deemed timely filed and the appeal shall be dismissed.

(2) Service of Notice of Appeal: The Appellant shall serve a copy of the Notice of Appeal on all persons identified in the Notice as required by subsection (3)(g) of this rule on or before the date the Notice of Appeal is required to be filed.

(3) Contents of Notice of Appeal: The Notice of Appeal shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption, which specifies the title of the appeal as "In the matter of an appeal of Development Review Decision No. [FILE NUMBER] by [APPELLANT'S NAME]."

(b) Adjacent to the caption, the heading "Notice of Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the appellant's reasons for appealing the decision including citations to the findings of fact, conclusions of law and conditions of approval in the decision and to provisions of the land use ordinance, sufficient to permit a person to understand the issues the appellant is raising to the Commission;

(f) A brief "ADR Statement" stating whether the appellant is willing to attempt to settle the case through negotiation with the Executive Director and other interested persons, or through alternative dispute resolution (including but not limited to mediation), and specifying the potentially interested persons (if applicable). This statement shall not be used to argue the merits of the appeal.

(g) The name, address, email address, and telephone number of each of the following:

(A) The Appellant, except that if an attorney represents the appellant, then the attorney's name, address, email address, and telephone number shall be substituted for that of the appellant.

(B) The applicant, if other than the appellant. If the applicant is represented by an attorney, then the applicant's address and telephone number may be omitted and the name, address and telephone number of the applicant's attorney shall be included;

(C) Any other person to whom written notice of the land use decision was mailed as shown on the Executive Director's records. The telephone number and email address may be omitted for any such person.

(h) A statement advising that all persons may give testimony at the hearing on the appeal; however, if a person wishes to receive a copy of the record and/or participate in the proceedings prior to the hearing, then that person must file and serve a Notice of Intervention pursuant to 350-70-170. The applicant is an automatic party to the appeal and need not file a notice of intervention.

(i) A statement that the Commission will set the date, time, and place for a hearing on the appeal and provide notice of the hearing approximately 20 days prior to the date of the hearing.

(j) A statement that written comments on the appeal will be accepted by the Commission until the close of the public hearing, but that persons are encouraged to submit written comments within 60 days from the date of the Notice of Appeal.

(k) A statement informing all persons whether the party filing the Notice of Appeal opts out of email service, and a statement informing persons that service of documents may be by email unless a person expressly opts out of receiving documents by email.

(l) Proof of service upon all persons required to be named in the Notice.

(4) Filing Fee and Deposit for Costs: The Columbia River Gorge Commission may charge a filing fee and deposit. Filing fees and deposits, if any, shall be set by the Gorge Commission's Executive Director and shall not exceed the true cost to the Commission of handling the appeal.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0070

Record

(1) Contents of Record: The record shall include the following:

(a) The final decision including findings of fact and conclusions of law;

(b) All evidence, exhibits, maps, documents or other written materials included in the Executive Director's land use application file; photos, maps, and exhibits that were prepared by or presented to the Executive Director in color shall be provided to the Commission in color in the original or certified copy of the record and all duplicate copies of the record;

(c) Minutes of any meetings conducted by the Executive Director as required by law.

(d) All documents relating to an applicant's request for special review, including the applicant's request, the Executive Director's recommendation, and all documents relied on by the Executive Director in making the recommendation.

(e) The Executive Director may retain any audiotape recording, large maps, or exhibits and documents which are difficult to duplicate, until the date of oral argument. The Executive Director shall make these items reasonably available for inspection and duplication by any person during the

ADMINISTRATIVE RULES

pendency of the appeal, and shall specify in its filing of the record the procedure for reviewing for these items.

(2) Preparation and Service of Record: Within 30 days after the Notice of Appeal is filed, the Executive Director shall prepare and serve a copy of the record, exclusive of audiotape recordings, large maps and other exhibits and documents which are difficult to duplicate, on the appellant and intervenors. The Commission may serve the record to persons in an electronic form to persons not opting out of email service.

(3) Specifications of Record:

(a) The record shall:

(A) Include a cover bearing the title of the case as it appears in the Notice;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins and listing each audiotape recording, large map or other exhibit or document retained by the Executive Director;

(C) Be securely fastened;

(D) Have pages numbered consecutively, with the page number at the bottom right-hand corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item on top.

(3) The Commission may charge persons the cost of duplicating and serving paper copies of the record consistent with the Commission's public records rule, 350-12.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93;

CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03;

CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0080

Objections to the Record

(1) Before filing an objection to the record, a person shall attempt to resolve the matter with the Executive Director.

(2) An objection to the record shall be filed at the Commission office and served within 10 days following service of the record on the person filing the objection. The person filing the objection to the record shall certify that the objection is made in good faith, that the objection is material, that the objection was not made for the purpose of delay, and that he or she has contacted the Executive Director and attempted to resolve the objection. Objections may be made on the following grounds:

(a) The record does not include all materials in the Executive Director's land use application file. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included in the Executive Director's land use application file. The item(s) not included shall be specified, as well as the basis for the claim that the item(s) are not part of the record. A document that is excluded from the record under this subsection may still be submitted to the Commission as otherwise provided in this division.

(c) The minutes or transcripts of meetings or hearings are incomplete or do not accurately reflect the proceedings. An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration, the Chair of the Commission shall require the Executive Director to produce additional evidence to prove the accuracy of the contested minutes or transcripts. If the evidence regarding contested minutes is an audiotape recording, a transcript of the relevant portion shall be submitted.

(3) The Chair of the Commission may conduct a telephone conference to consider and resolve any objections to the record.

(4) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Chair of the Commission shall issue a letter or order settling the record and setting forth the schedule for subsequent events. Unless otherwise provided by the Chair of the Commission, the date of

the letter or order shall be deemed the date that the record is settled for purposes of computing subsequent time limits. A letter or an order of the Chair settling the record is not appealable to the full Commission.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93;

CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03;

CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0090

Appellant's Brief

(1) Filing and Service of Brief: The appellant shall file at the Commission office and serve an Appellant's Brief within 30 days after the date the record is filed or settled if a party files an objection to the record. The Brief shall also be served on intervenors. Failure by the Appellant to file an Appellant's Brief within the time required by this section shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the Gorge Commission.

(2) Specifications of Brief: The Brief shall

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer brief is given by the Chair of the Commission. If an Appellant's Brief exceeding the 50 page limit is filed without permission, the Chair of the Commission shall notify the author, and a revised brief satisfying the 50 pages limit shall be filed and served within three (3) days of notification.

(c) Have a blue cover page, stating the full title of the proceeding, and the names, addresses and telephone numbers of the appellant and all intervenors. If any of the above is represented by an attorney, the name, address and telephone number of the attorney shall be substituted.

(d) If there is more than one appellant, the cover page shall specify the appellant(s) that are filing the Brief.

(e) Be typewritten, in 14-point type in a regularly used font such as Times New Roman, Helvetica, or Calibri, and double spaced;

(f) Be signed on the last page by the author. An electronic brief may contain an electronic signature or other generally accepted substitute.

(3) Contents of Brief: The Appellant's Brief shall:

(a) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The relief sought by the appellant;

(B) A summary of the arguments;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found, or other documents that the appellant intends to introduce at the hearing.

(b) Set forth each issue under a separate heading. Where several issues present essentially the same legal questions, the argument in support of those issues shall be combined;

(c) Contain, each as separate appendices, copies of all management plan provisions, comprehensive plan provisions, and all local state, regional, and federal laws cited in the brief, unless the provision is quoted verbatim in the Brief.

(d) Contain, each as separate appendices, copies of any documents and evidence, not contained in the record, that are referred to in the Brief.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93;

CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03;

CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0120

Motions, Generally and Procedural Orders

For the purpose of this section only, the term "party" shall refer to the appellant and any intervenor.

(1) Any party may submit a motion for action by the Chair of the Commission. For matters not otherwise specified by this division, the Chair of the Commission and all parties shall observe the following procedures for submittal and disposition of motions.

(2) A motion shall be filed at the Commission office by mail, email, or personal delivery.

(3) All contested motions shall be filed not less than 21 days prior to the date of the hearing before the Commission, except for good cause. A party seeking to file a motion less than 21 days prior to the hearing shall consult with all parties about the motion and present with the motion, an agreed schedule for responses. The schedule shall leave no less than 7 days prior to the hearing for the Chair of the Commission to issue an order, unless the Chair of the Commission consents to a shorter period.

(4) The movant shall serve a copy of the motion on all of the parties at the same time that the motion is filed and in the same manner as the motion was filed.

(5) Unless otherwise ordered by the Chair of the Commission, any party has 10 days to file a response to a motion, except that no response shall be filed for uncontested motions. The responding party shall serve a copy of the response on all of the parties at the same time that the response is filed and in the same manner that the response was filed. No party may file a reply to the response(s).

ADMINISTRATIVE RULES

(6) Any motion or response to a motion that does not conform to this subsection shall be rejected.

(7) The Chair of the Commission may provide the parties with a copy of an order on a motion by electronic mail to parties that have not opted out of email service.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0170 Intervention

(1) Any person may intervene in an appeal proceeding before the Commission. Status as an intervenor shall be recognized upon filing a Notice of Intervention.

(2) Notice of Intervention: In the interests of promoting timely resolution of appeals, a Notice of Intervention shall be filed at the Commission office within 14 days after the Notice of Appeal is filed pursuant to 350-070-0050. The Notice of Intervention (exhibit 2) shall:

(a) State whether the person supports or opposes the appellant, or whether the person neither supports nor opposes the appellant;

(b) Include a brief statement of the reasons for filing the motion for intervention, including citations to the decision and land use ordinance, if different than the reasons set forth in the Notice of Appeal.

(c) Include a brief "Intervenor's ADR Statement" stating whether the intervenor is willing to attempt to participate in resolving the case through negotiation or alternative dispute resolution, such as mediation. This statement shall not be used to argue merits of the appeal.

(d) Be served on the appellant and all other persons who have filed a Notice of Intervention.

(e) If applicable, a statement opting out of email service (note that a person must affirmatively opt out of email service).

(3) A person who files a Notice of Intervention shall be entitled to receive a copy of all matters that are filed with the Commission.

(4) Intervenor's Brief:

(a) An intervenor who supports the Appellant may file a brief, due at the same time as the appellant's brief, that satisfies the requirements in 350-070-0090, except that the Brief shall be entitled, "Intervenor [NAME]'s Brief in Support of Appellant."

(b) An intervenor who opposes the Appellant may file a brief, due at the same time as the appellant's brief, that satisfies the requirements in 350-070-0090, except that the Brief shall be entitled, "Intervenor [NAME]'s Brief Opposing Appellant", and shall have a red cover.

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

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0200 Extensions of Time

(1) In no event shall the time limit for the filing of the Notice of Appeal be extended.

(2) All other time limits may be extended upon written consent of the appellant and participants, the Commission's motion, or the motion of the appellant or a participant.

(3) A motion for extension of time shall state the reasons for granting the extension and must be filed and served within the time required for performance of the act for which an extension of time is requested.

(4) A first motion for extension of time for any act, which requests an extension for no greater than 30 days and is stipulated to by the appellant and all intervenors, shall be presumed granted on the date that the motion is filed. The Chair of the Commission shall confirm the extension to the appellant and all intervenors.

(5) Any other motion for extension of time that is stipulated to by the appellant and all intervenors shall be presumed granted for a period of 14 days, or until the Chair issues an order, whichever is earlier. The Chair of the Commission shall issue an order granting or denying the extension, and may modify the request.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0210

Stays

(1) Only an appellant or intervenor who would have standing to appeal a land use decision may file a motion for a stay. The movant may file a Notice of Intervention concurrently with the motion for a stay. A motion for a stay of a land use decision shall include:

(a) A statement setting forth the movant's right to standing to appeal the decision;

(b) A statement explaining why the challenged decision is subject to the Commission's jurisdiction;

(c) A statement of facts and reasons for issuing a stay, demonstrating a colorable claim of error in the decision and specifying how the movant will suffer irreparable harm if a stay is not granted;

(d) A suggested expedited briefing schedule;

(e) A copy of the decision under review and copies of all ordinances, resolutions, plans or other documents necessary to show the standards applicable to the decision under review.

(2) Unless otherwise ordered by the Chair of the Commission, a response to a motion for a stay of a land use decision shall be filed within 10 days after the motion is filed and shall set forth all matters in opposition to the motion and any facts showing any adverse effect, including an estimate of any monetary damages that will accrue if a stay is granted.

(3) The Chair of the Commission shall base a decision on the stay, including the right to a stay, or conditions of any stay order, upon the motion presented. Documents may be attached to the motion in the form of affidavits, maps or other materials, or presented at a hearing which may be convened at the discretion of the Chair of the Commission and follow the process in 350-70-140.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0220

Final Order of Commission

(1) A Final Order of the Commission shall:

(a) Contain the caption of the appeal and state "Final Opinion and Order";

(b) Acknowledge the record and other documents that were present before the Commission, and findings of fact and conclusions of law and/or an incorporation of findings and conclusions from the record below.

(c) Address the Special Review under Rule 350-60-090, where applicable.

(d) Contains findings of fact and conclusions of law or incorporates them from the record below.

(e) Indicate the Commission's decision;

(f) Contain the date of the final order; and

(g) Be signed by the Chair of the Commission.

(2) The order shall be served on all parties.

(3) When an order of the Commission becomes final it shall be made available to interested members of the public. The Commission may charge a reasonable fee for copies of its final orders or other orders furnished to members of the public.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)
Hist.: CRGC 1-1993(Temp), f. 5-6-93, cert. ef. 6-1-93; CRGC 4-1993, f. & cert. ef. 8-4-93; CRGC 4-1994, f. 12-22-94, cert. ef. 1-23-95; CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-070-0225

Dismissal by the Commission

(1) Voluntary Dismissal: The Chair of the Commission shall dismiss an appeal upon motion by the Appellant filed or expressed orally to the Commission prior to an oral decision. The dismissal shall be considered with prejudice and shall be effective on the date it is filed or expressed orally to the Commission.

(2) Involuntary Dismissal: The Chair of the Commission may dismiss an appeal when it appears to the Chair that the Appellant has failed to prosecute the appeal diligently; when the appeal is moot, or any other situation in which continuing the case would be manifestly unjust. The Chair of the Commission shall send a Notice of Intent to Dismiss stating the facts and reason for dismissal. The Appellant and intervenors shall have 10 days to respond to the notice, unless the Notice of Intent to Dismiss specifies a longer time.

ADMINISTRATIVE RULES

(3) The Chair of the Commission shall issue and serve on the Appellant and intervenors an order of dismissal, which shall be an appealable action of the Commission.

(4) When an appeal is dismissed, the Commission shall make no decision on the merits of the appeal. In the event that the Appellant and intervenors have entered into any settlement agreement concerning the issues raised in the appeal, the Commission shall not be bound by any terms of the settlement agreement in the instant or future matters.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 2-2003, f. 6-23-03, cert. ef. 8-1-03; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0017

Advising When Review is Required

(1) When a person inquires from the Commission whether a proposed development requires Scenic Area review and approval, and the Commission must consider whether the proposed development is in an urban area, the landowner or the landowner's representative shall submit to the Commission:

(a) Narrative metes and bounds description of the urban area boundary for the subject parcel;

(b) Survey map showing the subject parcel; the urban area boundary line; and the location of all proposed development, including but not limited to, buildings, other structures, fences, roads, and utilities; and,

(c) Written permission for Gorge Commission staff and persons providing technical assistance to the Commission to access the subject property to review or conduct surveying activities as needed for review of the survey.

(2) A licensed surveyor shall prepare the metes and bounds description and survey map. The surveyor shall contact the Commission office for a copy of the official maps, other necessary information, and technical assistance. The survey shall be based on official maps and shall not assume the correctness of any prior boundary determination by a non-surveyor. The Commission may require the surveyor to review proposed methodology with a U.S. Forest Service surveyor or another surveyor providing technical assistance to the Commission.

(3) After receipt of the items listed in section (1) above, the Commission will review the items and advise the landowner and county whether the proposed development requires approval under Scenic Area authorities. The Commission may engage a surveyor as needed for its review.

(4) Any disagreement with the landowner's metes and bounds description or survey map shall be handled in a manner common to resolution of surveying disputes generally, and shall not be appealable pursuant to the Scenic Area Act, Management Plan, or Commission Rules.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150, RCW 43.97.015, 16 U.S.C. § 544c(b) & 16 U.S.C. § 544m(a)(2)

Hist.: CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0020

Definitions

As used in Commission Rule 350-81, unless otherwise noted, the following words and their derivations shall have the following meanings:

(1) Accepted agricultural practice: A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.

(2) Accessory structure/building: A structure or detached building whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.

(3) Active wildlife site: A wildlife site that has been used within the past 5 years by a sensitive wildlife species.

(4) Addition: An extension or increase in the area or height of an existing building.

(5) Agency official: The federal, state, or local agency head or designee who has authority over a proposed project.

(6) Agricultural specialist (SMA): A person such as a county extension agent with a demonstrated knowledge of farming operations, and a demonstrated ability to interpret and recommend methods to implement regulations pertaining to agriculture. Such abilities are usually obtained through a combination of higher education and experience.

(7) Agricultural structure/building: A structure or building located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.

(8) Agricultural use: The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, fur bearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:

(a) The operation or use of farmland subject to any agriculture related government program.

(b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.

(c) Land planted in orchards or other perennials prior to maturity.

(d) Land under buildings supporting accepted agricultural practices. Agricultural use does not include livestock feedlots.

(9) Anadromous fish: Species of fish that migrate upstream to freshwater after spending part of their life in the ocean (saltwater).

(10) Anaerobic: A condition in which molecular oxygen is absent (or effectively so) from the environment.

(11) Aquaculture: The cultivation, maintenance, and harvesting of aquatic species.

(12) Aquatic area: The water area of a stream, pond, or lake measured at the ordinary high water mark.

(13) Archaeological resources: See cultural resource.

(14) Archival research: Research in primary documents that is likely to yield information regarding human occupation of the area in question, including but not limited to deed, census, cartographic, and judicial records.

(15) Bed and breakfast inn: An establishment located in a structure designed as a single family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.

(16) Best management practices: Conservation techniques and management measures that:

(a) Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;

(b) Minimize adverse affects to groundwater and surface water flow and circulation patterns; and

(c) Maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.

(17) Biodiversity (SMA): A diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.

(18) Boat landing: Cleared area or developed structure used to facilitate launching or retrieving watercraft.

(19) Buffer zone: An area adjacent to a wetland, stream, pond, or other sensitive area that is established and managed to protect sensitive natural resources from human disturbance. In instances that involve a wetland, stream, or pond, the buffer zone includes all or a portion of the riparian area.

(20) Building: Any structure used or intended for supporting or sheltering any use or occupancy. Buildings have a roof supported by columns or walls. They include, but are not limited to, dwellings, garages, barns, sheds and shop buildings.

(21) Camping or recreational vehicle: A vacation trailer, camper, self propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit if it is connected to a sewer system (including septic tank), water, and electrical lines or is occupied on the same parcel for more than 60 days in any consecutive 12-month period.

(22) Campsite: Single camping unit, that usually consists of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.

(23) Capability: The ability of land to produce forest or agricultural products due to characteristics of the land itself, such as soil, slope, exposure, or other natural factors.

(24) Canopy closure (SMA): For forest practices, the percentage measuring the degree to which one layer of a tree canopy blocks sunlight or obscures the sky as measured from below.

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(25) Cascadian architecture (SMA): Architectural style using native rock work, large timber, and steeply pitched roofs in a rustic manner.

(26) Catastrophic situations (SMA): Forces such as fire, insect and disease infestations, and earth movements.

(27) Childcare center: A facility providing daycare to three or more children, but not including:

(a) The provision of care that is primarily educational, unless provided to a preschool child for more than 4 hours a day.

(b) The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion.

(c) The provision of short-term care related to or associated with group athletic or social activities.

(d) The provision of daycare in the provider's home in the family living quarters for less than 13 children.

(28) Columbia River Gorge National Scenic Area Graphic Signing System: Sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.

(29) Commercial development/use: Any facility or use of land or water whose function is primarily retail buying or selling of goods or services or both. This does not include fruit or produce stands.

(30) Commercial forest products: These include timber for lumber, pulp, and firewood for commercial purposes.

(31) Commercial recreation: Any private (non governmental) recreational activity or facility on privately owned land, excluding nonprofit facilities. This does not include operation of a public recreation facility by a private vendor.

(32) Community facility: Basic utilities and services necessary to support public service needs, including but not limited to water and power utilities, sanitation facilities, public microwave stations and communication facilities, schools, roads and highways. This does not include sanitary landfills.

(33) Consulting parties (cultural resources): Organizations or individuals who submit substantive written comments to a local government in a timely manner because they are concerned with the effects of a proposed use on cultural resources.

(34) Contiguous land: Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.

(35) Counties: The six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.

(36) Created opening (SMA): A created forest opening with less than 40 percent average canopy closure of overstory trees and less than 60 percent average canopy closure of understory trees averaging less than 5 inches diameter at breast height for coniferous forests and less than 25 percent total canopy cover for oak woodlands. This definition does not include agricultural fields.

(37) Creation (wetlands): A human activity that converts an upland into a wetland. This definition presumes that the area to be converted has not been a wetland in recent times (100 to 200 years).

(38) Cultivation: Any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.

(39) Cultural resource: Evidence of human occupation or activity that is important in the history, architecture, archaeology or culture of a community or region. Cultural resources include, but are not limited to, the following:

(a) Archaeological resources. Physical evidence or ruins of human occupation or activity that are located on or below the surface of the ground and are at least 50 years old. Archaeological resources include, but are not limited to, the remains of houses, villages, camp and fishing sites, and cave shelters; rock art such as petroglyphs and pictographs; artifacts such as arrowheads, utensils, tools, fragments of tools and utensils, obsidian flakes or other material byproducts from tool and utensil-making activities; and graves, human remains, and associated artifacts.

(b) Historic buildings and structures. Standing or above ground buildings and structures that are at least 50 years old. Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels.

(c) Traditional cultural properties. Locations, buildings, structures, and objects that are associated with cultural beliefs, customs, or practices

of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community. Traditional cultural properties include, but are not limited to, a location associated with the traditional beliefs of a Native American group about its origins or its cultural history; a location where a community has traditionally carried out artistic or other cultural practices important in maintaining its historical identity; and a location where Native American religious practitioners have historically gone, and go today, to perform ceremonial activities. Objects may include petroglyphs, pictographs, rock cairns or other rock structures, trees, and rock outcrops.

(40) Cumulative effects: The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

(41) Cut: An area where soil or earth is excavated or removed in conjunction with development activities.

(42) Dedicated site: An area actively devoted to the current use and as delineated on the site plan.

(43) Deer and elk winter range: Areas normally used, or capable of being used, by deer and elk from December through April.

(44) Destruction of wetlands: Loss of the wetlands or any of its component parts, including the filling, draining, or other adverse effect to the sustainable functioning of the wetland.

(45) Developed recreation: Recreational opportunities characterized by high density use on specific sites and requiring facilities installation. Density of use, amount of site development, and type of recreation site can vary widely across the spectrum of recreation activities.

(46) Developed road prism (SMA): The area of the ground associated with a particular road and containing the road surface, ditch, shoulder, retaining walls, or other developed features. Does not include the natural appearing portions of cut and fill slopes.

(47) Development: Any land division or structure, including but not limited to new construction of buildings and structures, and mining, dredging, filling, grading, paving, and excavation.

(48) Diameter at breast height (dbh): The diameter of a tree as measured at breast height.

(49) Duplex: A building containing two dwelling units and designed for occupancy by two families.

(50) Dwelling, single family: A detached building containing one dwelling unit and designed for occupancy by one family only.

(51) Dwelling unit: A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.

(52) Earth materials: Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).

(53) Effect on treaty rights: To bring about a change in, to influence, to modify, or to have a consequence to Indian treaty or treaty-related rights in the Treaties of 1855 with the Nez Perce, Umatilla, Warm Springs and Yakima tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.

(54) Emergency/disaster: A sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

(55) Emergency/disaster response: Actions involving any development (such as new structures, grading, or excavation) or vegetation removal that must be taken immediately in response to an emergency/disaster event (as defined above). Emergency/disaster response actions not involving any structural development or ground-disturbance (such as use of emergency transport vehicles, communications activities or traffic control measures) are not included in this definition and are not affected by these provisions.

(56) Endemic: Plant and animal species that are found only in the vicinity of the Columbia River Gorge area.

(57) Enhancement (natural resources): A human activity that increases one or more functions of an existing wetland, stream, lake, riparian area, or other sensitive area. Enhancement is generally limited to a wetland, stream, lake, riparian area, or other sensitive area that is degraded. Enhancing an area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.

(58) Ephemeral streams (SMA): streams that contain flowing water only during, and for a short duration after, precipitation events.

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(59) **Ethnography:** The descriptive and analytic study of the culture of particular groups. An ethnographer seeks to understand a group through interviews with its members and often through living in and observing it.

(60) **Existing use or structure:** Any use or structure that was legally established. "Legally established" means:

(a) the landowner or developer obtained applicable land use and building permits and complied with land use regulations and other laws that were in effect at the time the use or structure was established, or that were in effect at the time the landowner or developer corrected an improperly established use or structure;

(2) the use or structure was initially operated or constructed according to those applicable permits, land use regulations and other laws, or has been operated or constructed according to permits obtained to correct an improperly established use or structure; and

(c) Any changes to the original use or structure must comply with all applicable permit requirements, land use regulations and other laws that were in effect at the time the change was established.

(61) **Exploration, development (extraction and excavation), and production of mineral resources:** Includes all or any part of the process of surface, underground, or submerged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.

(62) **Fill:** The placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.

(63) **Finished grade:** The final elevation of the ground level of a property after construction is completed.

(64) **Fire break:** A break in ground cover fuels, adjacent to and surrounding buildings.

(65) **Footprint:** The area that falls directly beneath and shares the same perimeter as a structure.

(66) **Forbs:** Broad leaved herbs, in contrast to ferns, fern allies, and grasses and grasslike plants.

(67) **Foreground (SMA):** One half mile on either side of a traveled road or trail.

(68) **Forest health (SMA):** A measure of the robustness of forest ecosystems. Forests are deemed healthy when they have capacity across the landscape for renewal, for the maintenance of wildlife habitats, for recovery from a wide range of disturbances, and for retention of their resilience.

(69) **Forest practice (SMA):** Any activity conducted on or directly pertaining to forested land and relating to forest ecosystem management including but not limited to growing, thinning, or removing live or dead forest tree or shrub species, road and trail construction, reforestation, fertilizing, brush control, prevention of wildfire, and suppression of diseases and insects. The removal of hazardous trees is excluded. Uses that include establishment, management or harvest of Christmas trees, nursery stock, or fiber producing tree species requiring intensive cultivation (irrigation, fertilization, etc.) and a harvest rotation of 12 years or less are considered agricultural uses.

(70) **Forest practice (GMA):** Those activities related to the growing and harvesting of forest tree species, as defined by the Oregon Forest Practices Act or the Washington Forest Practices Act.

(71) **Forest products:** Commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.

(72) **Forest stand structure (SMA):** The number, types and spacing of tree species, tree sizes, and canopy layers contained in a stand of trees.

(73) **Forest use:** The growing, propagation, and harvesting of forest tree species and other forest products.

(74) **Fully screened:** A description of the relative visibility of a structure where that structure is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan).

(75) **Grade (ground level):** The average elevation of the finished ground elevation as defined by the Uniform Building Code.

(76) **Grading:** Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

(77) **Hazard tree (SMA):** A tree with a structural defect that will predictably result in whole or partial failure within 1.5 tree lengths of a road or maintained development. A defective tree is hazardous only when its failure could result in danger to people or damage to structures, vehicles, or other property.

(78) **Height of building:** The greatest vertical distance between the point of lowest finished grade adjoining any exterior wall of a building and the highest point of the roof, such as the highest coping or parapet of a flat roof, the highest deck line of a mansard roof, or the highest ridge of a hip, gable, gambrel, shed or other pitched roof.

(79) **Herbaceous:** A plant with no persistent woody stem above the ground, with characteristics of an herb.

(80) **Herbs:** Nonwoody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and nonwoody vines.

(Note: Seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(81) **Historic buildings and structures:** See cultural resource.

(82) **Historic survey:** Actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs.

(83) **Horses, boarding of (GMA):** The stabling, feeding, and grooming, or the use of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals, and exercise tracks. These facilities are either operated for a fee or by a non-profit organization.

(84) **Hydric soil:** A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(85) **In lieu sites:** Sites acquired by the Army Corps of Engineers and transferred to the Bureau of Indian Affairs for treaty fishing, in lieu of those usual and accustomed fishing areas lost by inundation from reservoir construction. These sites were acquired under the provisions of Public Law 14 and Public Law 100 581, Section 401. Additional in lieu sites will be provided for.

(86) **Indian tribal government:** The governing bodies of the Nez Perce Tribe (Nez Perce Tribal Executive Committee), the Confederated Tribes of the Umatilla Indian Reservation (Board of Trustees), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribal Council), and the Confederated Tribes and Bands of the Yakama Indian Nation (Tribal Council).

(87) **Indian tribes:** The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(88) **Industrial uses:** Any use of land or water primarily involved in:

(a) Assembly or manufacture of goods or products,

(b) Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit,

(c) Storage or warehousing, handling or distribution of manufactured goods or products, raw materials, agricultural products, forest products, or recyclable materials for purposes other than retail sale and service, or

(d) Production of electric power for commercial purposes.

(89) **Interpretive displays:** Signs and structures that provide for the convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.

(90) **Key components:** The attributes that are essential to maintain the long term use and productivity of a wildlife site. The key components vary by species and wildlife site. Examples include fledgling and perching trees, watering sites, and foraging habitat.

(91) **Key viewing areas:** Those portions of important public roads, parks, or other vantage points within the Scenic Area from which the public views Scenic Area landscapes. These include:

(a) Historic Columbia River Highway;

(b) Crown Point;

(c) Highway I 84, including rest stops;

(d) Multnomah Falls;

(e) Washington State Route 14;

(f) Beacon Rock;

(g) Panorama Point Park;

(h) Cape Horn;

(i) Dog Mountain Trail;

(j) Cook Underwood Road;

(k) Rowena Plateau and Nature Conservancy Viewpoint;

(l) Portland Women's Forum State Park;

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- (m) Bridal Veil State Park;
- (n) Larch Mountain;
- (o) Rooster Rock State Park;
- (p) Bonneville Dam Visitor Centers;
- (q) Columbia River;
- (r) Washington State Route 141;
- (s) Washington State Route 142;
- (t) Oregon Highway 35;
- (u) Sandy River;
- (v) Pacific Crest Trail;
- (w) SMA only;
- (x) Old Washington State Route 14 (County Road 1230);
- (y) Wyeth Bench Road;
- (z) Larch Mountain Road;
- (aa) Sherrard Point on Larch Mountain.

(92) Land division: The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the proposed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.

(93) Landscape setting: The combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.

(94) Livestock feedlot: Stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay feeding grounds.

(95) Lot line adjustment: Relocation of one or more common boundary lines between two contiguous parcels that does not create additional parcels.

(96) Maintenance: Ordinary upkeep or preservation of a serviceable structure affected by wear or natural elements. Maintenance does not change the original size, scope, configuration or design of a structure. Maintenance includes, but is not limited to, painting and refinishing, regrouting masonry, patching roofs, grading gravel roads and road shoulders, cleaning and armoring ditches and culverts, filling potholes, controlling vegetation within rights-of-way, removing trees and other roadside hazards within rights-of-way, and testing and treating utility poles.

(97) Mitigation: The use of any or all of the following actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(98) Mosaic (SMA): The dispersal of overstory and understory leave trees in irregularly spaced clumps of varying sizes throughout an irregularly shaped created forest opening.

(99) Multifamily dwelling: A dwelling constructed or modified into two or more single family units.

(100) Native species: Species that naturally inhabit an area.

(101) Natural grade: The undisturbed elevation of the ground level of a property before any excavation or construction operations.

(102)(a) Natural resources (SMA): Naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.

(b) Natural Resources (GMA): Wetlands, streams, ponds and lakes, riparian areas, wildlife and wildlife habitat, rare plants, and natural areas.

(103) Natural resource specialist: A person with professional qualifications, including an academic degree or sufficient professional experience, in the subject matter the specialist is being asked to analyze or evaluate.

(104) Natural resource based recreation (SMA): Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found within the Scenic Area. Campgrounds, trails, boating and windsurfing facilities, swimming beaches, picnic sites, viewpoints, interpretive parks, and similar outdoor recreation facilities are considered resource based; golf courses, tennis courts, and rental cabins are not.

(105) Nonprofit organization: An organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.

(106) Not visually evident (SMA): A visual quality standard that provides for development or uses that are not visually noticeable to the casual visitor. Developments or uses shall only repeat form, line, color, and texture that are frequently found in the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be noticeable.

(107) Old growth (SMA): A forest stand usually at least 180-220 years old with moderate to high canopy closure; a multi-layered, multi-species canopy dominated by large overstory trees; high incidence of large trees, some with broken tops and other indications of old and decaying wood (decadence); numerous large snags, and heavy accumulations of wood, including large logs on the ground.

(108) Operational (SMA): For new agricultural use, an agricultural use shall be deemed operational when the improvements and investments described in the Stewardship Plan are in place on the parcel.

(109) Ordinary high water mark: The mark on all streams, ponds, and lakes that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.

(110) Other related major structure (SMA): A structure related to a dwelling on a parcel in the SMA that is less than 40 acres in size, which is not incidental and subordinate to the main use of the property. A building or structure that satisfies the definition of "accessory building" is not an "other related major structure" or a "major development action."

(111) Overstory (SMA): For forest practices, the tall or mature trees that rise above the shorter or immature understory trees.

(112) Parcel:

(a) Any unit of land legally created by a short division, partition, or subdivision that was legally recognized under all state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the Forest Service Office prior to the Final Interim Guidelines.

(d) A unit of land shall not be considered a separate parcel simply because the subject tract of land:

(A) Is a unit of land solely created to establish a separate tax account;

(B) Lies in different counties;

(C) Lies in different sections or government lots;

(D) Lies in different land use or zoning designations; or

(E) Is dissected by a public or private road.

(113) Practicable: Able to be done, considering technology and cost.

(114) Preexisting: Existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.

(115) Previously disturbed: An area of land where the natural surface has been graded, excavated, paved and/or graveled.

(116) Project area: The geographic area or areas within which new development and uses may cause changes in the character or use of cultural resources, if any such resources exist.

(117) Public use facility: Recreation development(s) that meet the definition of "recreation facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.

(118) Rare plant species: Used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.

(119) Recreation facility: A cluster or grouping of recreational developments or improvements located in relatively close proximity to one another, and that are not separated in distance by more than 1/4 mile of land that does not contain any such developments or improvements, except for roads and/or pathways.

(120) Reconnaissance survey: Actions conducted to determine if archaeological resources are present in an area that would be affected by a proposed use. Reconnaissance surveys may include archival research, surface surveys, subsurface testing, and ethnographic research.

(121) Recreation opportunity spectrum (ROS): A means of classifying areas in relation to the types of recreation opportunities and experiences they provide or are appropriate for. The spectrum ranges from primitive (wilderness areas) to urban (highly modified areas).

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(a) Primitive: Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.

(b) Semiprimitive: Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.

(c) Roaded Natural: Roaded areas with moderately frequent human encounters and with resource modifications evident.

(d) Rural: Roaded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.

(e) Suburban: Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.

(f) Urban: Highly accessible, roaded areas dominated by human encounters and human-related structures.

(122) Recreation resources: Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semi-primitive areas with few facilities and developed sites.

(123) Regularly maintained: An area of land that has been previously disturbed and where periodic actions have been taken to (1) keep the area clear of vegetation (e.g., shoulders, utility yards), (2) limit the height and type of vegetation (e.g., utility rights-of-way), and/or (3) establish and retain non-native vegetation (e.g., landscaped medians, rest area grounds).

(124) Rehabilitation (natural resources): A human activity that returns a wetland, stream, buffer zone, or other sensitive area that was disturbed during construction of a permitted use to its natural or preconstruction condition.

(125) Remnant old forest (SMA): Large trees in the overstory that are well into the mature growth state (older than 180 years).

(126) Repair: Replacement or reconstruction of a part of a serviceable structure after damage, decay or wear. A repair returns a structure to its original and previously authorized and undamaged condition. It does not change the original size, scope, configuration or design of a structure, nor does it excavate beyond the depth of the original structure. Repair includes, but is not limited to, reroofing a building, replacing damaged guardrails, reconstructing a rotten deck or porch, replacing a broken window or door, replacing a utility pole and associated anchors, replacing a section of broken water or sewer line, replacing a damaged or defective utility line, reconstructing a portion of a building damaged by fire or a natural event, and replacing railroad ties or rails.

(127) Resource based recreation: Those recreation uses that are essentially dependent upon the natural, scenic, or cultural resources of the Scenic Area and that do not adversely affect those resources upon which they depend.

(128) Restoration (wetlands): A human activity that converts an area that was formerly a wetland back into a wetland. This definition presumes that the area to be restored no longer qualifies as a wetland because of past activities, alterations, or catastrophic events.

(129) Review uses: Proposed uses and developments that must be reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they comply with the policies and guidelines in the Management Plan.

(130) Riparian area: The area immediately adjacent to streams, ponds, lakes, and wetlands that directly contributes to the water quality and habitat components of the water body. This may include areas that have high water tables and soils and vegetation that exhibit characteristics of wetness, as well as upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover, or debris, or that directly enhance water quality within the water body.

(131) Road: The entire right of way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:

(a) Ways described as streets, highways, throughways, or alleys.

(b) Road related structures that are in the right of way, such as tunnels, culverts, or similar structures.

(c) Structures that provide for continuity of the right of way, such as bridges.

(132) Scenic Area: The Columbia River Gorge National Scenic Area.

(133) Scenic travel corridor: Those portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

(134) Secretary: The Secretary of Agriculture.

(135) Sensitive plant species: Plant species that are (1) endemic to the Columbia River Gorge and vicinity, (2) listed as endangered or threatened pursuant to federal or state endangered species acts, or (3) listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program. In the SMA, sensitive plant species also include plant species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(136) Sensitive wildlife species: Animal species that are (1) listed as endangered or threatened pursuant to federal or state endangered species acts, (2) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission, (3) listed as sensitive by the Oregon Fish and Wildlife Commission, or (4) considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat, golden eagle, and prairie falcon. In the SMA, sensitive wildlife species also include animal species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(137) Service station: A business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(138) Serviceable: Presently useable.

(139) Shall: Action is mandatory.

(140) Should: Action is encouraged.

(141) Shrub: A woody plant usually greater than 3 feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance. (Note: For the Management Plan, seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(142) Sign: Any placard, poster, billboard, advertising structure or inscribed surface, pattern or artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure, or other visually communicative or expressive device that is visible from an out of doors position and is used to advertise or call the public's attention to any public, business, commercial, industrial, recreational or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal, ornament, logotype, or advertising matters is made visible. The meaning of "sign" shall also include any sign currently in disuse, but still visible from an out of doors position, and any frame or support structure erected specifically to bear or uphold a sign.

(143) Significant cultural resource (SMA): A cultural resource that is included in, or eligible for inclusion in, the National Register of Historic Places. (The criteria for evaluating the eligibility of properties for the National Register of Historic Places appear in "National Register Criteria for Evaluation" [36 CFR 60].)

(144) Skyline: The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.

(145) Soil capability class: A classification system developed by the U.S. Department of Agriculture, Natural Resources Conservation Service to group soils as to their capability for agricultural use.

(146) Special habitat area: Wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.

(147) Special streams: Streams that are primary water supplies for fish hatcheries and rearing ponds.

(148) Stand: A group of trees possessing uniformity in regard to type, age, vigor, or size.

(149) Story: A single floor level of a structure, as defined by the Uniform Building Code.

(150) Streams: Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, springs and defined channel swales. The channel or bed does not have to contain water year round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses. For the Management Plan, streams are categorized into two classes: perennial streams and intermittent streams. Perennial stream means a stream that flows year round during years of normal precipitation. Intermittent stream means a stream that flows only part of the year, or seasonally, during years of normal precipitation.

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(151) Structure: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, and additions/alterations to structures.

(152) Submit: To deliver a document (e.g., land use application, written comment) to a reviewing agency's office by personal delivery, commercial delivery, mail, fax, or E-mail. When a document must be submitted within a specified period, it must arrive at the reviewing agency's office by the close of business on the last day of the specified period.

(153) Subsurface testing: Any procedure that removes material from beneath the ground surface for the purpose of identifying cultural resources, such as shovel tests, posthole digger tests, and auger borings.

(154) Suitability: The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.

(155) Thinning (SMA): A forest practice intended to create favorable conditions for the continued growth of trees within an existing stand of trees. A thinning becomes a forest opening in coniferous forests when the average canopy closure of the overstory layer is zero or less than 40 percent and the understory layer is less than 60 percent average canopy closure of trees averaging less than 5 inches diameter at breast height. A thinning becomes a forest opening in oak woodlands when the total average canopy closure is less than 25 percent.

(156) Total canopy closure (SMA): For forest practices, the percentage measuring the degree to which all layers of the tree canopy combine together to block sunlight or obscure the sky as measured from below.

(157) Travelers accommodations: Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.

(158) Treatment (SMA): For forest practices, a site-specific operation that carries out the forest management objectives for an area.

(159) Treaty rights or other rights: Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.

(160) Tributary fish habitat: Streams that are used by anadromous or resident fish for spawning, rearing and/or migration.

(161) Understory (SMA): For forest practices, the shorter or immature trees below the tall or mature overstory trees.

(162) Undertaking: Any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resources are located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements.

(163) Unimproved lands: Lands that generally do not have developments such as buildings or structures.

(164) Upland: Any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.

(165) Uses allowed outright: New uses and developments that may occur without being reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they are consistent with the Management Plan.

(166) Utility facility: Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.

(167) Vested right: The right to develop or continue to develop a use, development or structure that was reviewed and approved pursuant to this Management Plan.

(168) Viewshed: A landscape unit seen from a key viewing area.

(169) Visual quality objective (VQO): A set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention (not visually evident) and partial retention (visually subordinate), and others in the Mt. Hood and Gifford Pinchot National Forest Plans.

(170) Visually subordinate: A description of the relative visibility of a structure or use where that structure or use does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point

(generally a key viewing area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings. Visually subordinate forest practices in the SMA shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.

(171) Water dependent: Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water dependent uses include, but are not limited to, docks, wharfs, piers, dolphins, certain fish and wildlife structures, boat launch facilities, and marinas. Dwellings, parking lots, spoil and dump sites, roads, restaurants, trails and paths, trailer parks, resorts, and motels are not water dependent.

(172) Water related: Uses not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body. In the GMA, water related uses shall be limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.

(173) Wetlands: Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include riparian areas, rivers, streams, and lakes.

(174) Wetlands functions: The beneficial roles that wetlands serve, including storage, conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

(175) Winery: An agricultural facility used for processing grapes into wine, including laboratories, processing areas, offices, and storage areas. A winery is distinct from a wine sales/tasting room; each of these uses must be explicitly reviewed and approved.

(176) Wine sales/tasting room: A facility that is accessory to a winery and used for tasting and retail sales of wine, including interior space (e.g., wine bar, sitting room) and exterior space (e.g., patio, veranda). A wine sales/tasting room shall not be used for preparing or serving meals or hosting weddings, receptions or other commercial events, unless allowed, reviewed and approved under the "Commercial Events" provisions in 350-81-108. A wine sales/tasting room is distinct from a winery; each of these uses must be explicitly reviewed and approved.

(177) Woody plant: A seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0082

Existing Uses and Discontinued Uses

(1) Right to Continue Existing Uses and Structures, Except as otherwise provided, any existing use or structure may continue as long as it is used in the same manner and for the same purpose.

(2) Replacement of Existing Structures Not Damaged or Destroyed by Disaster Except as provided in 350-81-082(3), an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply with the following standards:

(a) The replacement structure shall be used in the same manner and for the same purpose as the original structure.

(b) The replacement structure may have a different size and/or location than the original structure. An existing mobile home may be replaced with a framed residence and an existing framed residence may be replaced with a mobile home.

(c) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.

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(d) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one year time frame.

(3) Replacement of Existing Structures Damaged or Destroyed by Disaster

(a) An existing structure damaged or destroyed by fire, flood, landslide or other similar disaster may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure. An existing mobile home may be replaced with a framed residence.

(B) The replacement structure shall be in the same location as the original structure. An exception may be granted and the replacement structure may be sited in a different location if the following conditions exist:

(i) A registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the disaster made the original building site physically unsuitable for reconstruction.

(ii) The new building site is no more visible from key viewing areas than the original building site. An exception may be granted if a registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the subject parcel lacks alternative building sites physically suitable for construction that are no more visible from key viewing areas than the original building site.

(iii) The new building site complies with the cultural resources, natural resources, and treaty rights protection guidelines.

(C) The replacement structure shall be the same size and height as the original structure, provided:

(i) The footprint of the replacement structure may be up to 10 percent larger than the footprint of the original structure.

(ii) The walls of the replacement structure shall be the same height as the walls of the original structure unless a minor increase is required to comply with standards in the current jurisdictional building code.

(D) The replacement structure shall only be subject to the following scenic resources standards:

(i) The replacement structure shall comply with the scenic resources guidelines regarding color and reflectivity. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable.

(ii) Decks, verandas, balconies and other open portions of the original structure shall not be rebuilt as enclosed (walls and roof) portions of the replacement structure.

(iii) In the General Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable, provided:

(I) Except as provided in 350-81-082(3)(a)(D)(iii)(II), the percent of the replacement structure screened by vegetation as seen from key viewing areas shall not exceed the percent of the original structure that was screened by vegetation as seen from key viewing areas. Coniferous vegetation shall be replaced with coniferous vegetation and deciduous vegetation shall be replaced with deciduous vegetation unless the applicant chooses to use all coniferous vegetation.

(II) In situations where the original structure was approved under Scenic Area regulations (e.g., Final Interim Guidelines, land use ordinance), the percent of the replacement structure screened by vegetation shall comply with any conditions of approval that required a landowner to preserve existing vegetation and/or plant and maintain new vegetation to screen the original structure as seen from key viewing areas.

(III) To help determine how much vegetation may be required under 350-81-082(3)(a)(D)(iii)(I) and (II), land use applications shall include all available documentation (photographic or otherwise) on the amount and type of vegetation that screened the original structure from key viewing areas. At a minimum, development review decisions shall include findings that address the following:

(1) The percent of original structure facing each key viewing area that was screened by coniferous vegetation, for each key viewing area from which the structure was visible.

(2) The percent of original structure facing each key viewing area that was screened by deciduous vegetation, for each key viewing area from which the structure was visible.

(3) Elevation drawings showing the replacement structure and the amount of coniferous and deciduous vegetation that would screen the structure from key viewing areas in 10 years.

(IV) The height of any new trees shall not be required to exceed 5 feet.

(V) The time frame for achieving visual subordination shall be 10 years or less from the commencement of construction.

(iv) In the Special Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:

(I) The Scenic Resources Implementation Handbook shall be utilized to determine approvable species and minimum approvable sizes of new trees planted (based on average growth rates expected for approvable species).

(II) The height of any new trees shall not be required to exceed 5 feet.

(III) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be 10 years.

(E) The replacement structure shall be subject to 350-81-082(2)(a)(A), (B), and (C) above if it would not comply with 350-81-082(3)(a)(B) and (C).

(F) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the two year time frame.

(4) Changes to Existing Uses and Structures; Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to Commission Rule 350-81.

(a) Expansion of Existing Commercial and Multifamily Residential Uses: In the SMA, existing commercial and multifamily residential uses may expand as necessary for successful operation on the dedicated site, subject to guidelines to minimize adverse effects on scenic, cultural, natural, and recreation resources. Expansion beyond the dedicated site shall be prohibited.

(b) Conversion of Existing Industrial Uses in the GMA: In the GMA, existing industrial uses may convert to less intensive uses. For this section, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.

(c) Existing Development or Production of Mineral Resources in the GMA: In the GMA, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural, or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to land use ordinances under the Management Plan if any of the following conditions exist:

(A) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain that was merely leveled or cleared of vegetation.

(B) The site has not maintained a required state permit.

(C) The site has not operated legally within 5 years before October 15, 1991.

(d) Existing Development or Production of Mineral Resources in the SMA: Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMA may continue if both of the following conditions exist:

(A) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the SMA.

(B) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural, or recreation resources.

(5) Discontinuance of Existing Uses and Structures Except as provided in 350-81-082(3)(a) and (3)(a)(F), any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.

(a) Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.

(b) Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.

(6) Discontinued Uses and Structures: Re-establishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including,

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but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0540

General Management Area Cultural Resource Review Criteria

(1) General Provisions for Implementing the Cultural Resources Protection Process.

(a) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and Guidelines for Evaluating and Documenting Traditional Cultural Properties (Parker and King, no date).

(b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.

(c) Reconnaissance and Historic Surveys and Survey Reports.

(A) Reconnaissance survey requirements and exceptions.

(i) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in 350-81-540(1)(c)(A)(ii) below.

(ii) A reconnaissance survey shall be required for all proposed uses, except:

(I) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(II) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(III) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pastures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved. The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

(IV) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.

(V) Proposed uses that would occur on sites that have been adequately surveyed in the past. The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

(VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

(aa) Residential development that involves two or more new dwellings for the same project applicant.

(bb) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.

(cc) Public transportation facilities that are outside improved rights-of-way.

(dd) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.

(ee) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances. Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archae-

ologists. The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

(B) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

(C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant. For 350-081-0540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

(D) Reconnaissance Surveys for Small-Scale Uses. Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

(i) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.

(ii) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

(E) Reconnaissance Survey Reports for Small-Scale Uses. The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

(i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.

(ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.

(iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

(F) Reconnaissance Surveys for Large-Scale Uses

(i) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.

(ii) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:

(I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.

(II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.

(III) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.

(IV) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

(G) Reconnaissance Survey Reports for Large-Scale Uses

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

(i) A description of the proposed use, including drawings and maps.

(ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.

(iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.

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(iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.

(vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

(H) Historic Surveys and Reports

(i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.

(ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.

(iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

(d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

(e) Cultural resources are significant if one of the following criteria is satisfied:

(A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).

(B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

(f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Executive Director as to whether affected cultural resources are significant.

(g) Determination of potential effects to significant cultural resources shall include consideration of cumulative effects of proposed developments that are subject to any of the following: 1) a reconnaissance or historic survey; 2) a determination of significance; 3) an assessment of effect; or 4) a mitigation plan.

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research;

(A) When written comments are submitted to the Executive Director within the comment period provided in 350-81-040, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons. Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed. All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

(B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research

shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate. All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

(b) Notice of Survey Results:

(A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.

(B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-81-540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude when one of the following conditions exists:

(i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.

(ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2(b)(B) above.

(iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone. Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected. An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

(iv) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

(a) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(b) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in The Secretary of the Interior's Standards for Rehabilitation (U.S. Department of the Interior 1990) and The Secretary of the Interior's Standards for Historic Preservation Projects (U.S. Department of the Interior 1983). The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission. The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Executive Director question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

(3) Evaluation of Significance

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(a) Evaluation Criteria and Information Needs If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

(A) Evaluations of significance shall follow the procedures in How to Apply the National Register Criteria for Evaluation (U.S. Department of the Interior, no date) and Guidelines for Evaluating and Documenting Traditional Cultural Properties (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.

(C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

(D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

(E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.

(b) Notice of Evaluation Results:

(A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Cultural Resources are Culturally Significant:

(A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

(B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Executive Director within 30 calendar days from the date the evaluation of significance is mailed.

(d) Conclusion of the Cultural Resource Protection Process:

(A) The Executive Director shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.

(C) If the project applicant or the Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

(4) Assessment of Effect:

(a) Assessment Criteria and Information Needs If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.5) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.11.

(i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant.

(ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on cultural resources include, but are not limited to:

(I) Physical destruction, damage, or alteration of all or part of the cultural resource.

(II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

(III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.

(IV) Neglect of a significant cultural resource resulting in its deterioration or destruction, except as described in 36 CFR 800.5.

(B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.

(C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:

(i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.

(ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with The Secretary of the Interior's Standards for Rehabilitation (U.S. Department of the Interior 1990) and The Secretary of the Interior's Standards for Historic Preservation Projects (U.S. Department of the Interior 1983).

(b) Notice of Assessment Results:

(A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.

(C) A mitigation plan shall be prepared if a project applicant or the Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.

(5) Mitigation Plans

(a) Mitigation Plan Criteria and Information Needs Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no effect or no adverse effect. Mitigation plans shall meet the following guidelines:

(A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.

(B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use. Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect

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cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.

(C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.11, including, but not limited to:

(i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.

(ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.

(iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.

(iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Executive Director.

(v) Copies of any written recommendations submitted to the Executive Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

(b) Notice of Mitigation Plan Results:

(A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.

(C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

(6) Cultural Resources Discovered After Construction Begins The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Executive Director and the State Historic Preservation Officer. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

(a) Halt of Construction. All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.

(b) Notification. The project applicant shall notify the Executive Director within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(c) Survey and Evaluation. The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute 358.905 to 358.955, and Revised Code of Washington 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" and "Evaluation of Significance: Evaluation Criteria and Information Needs". Based on the survey and evaluation report and any written comments, the Executive Director shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant. A mitigation plan shall be prepared if the affected cultural resources are significant.

(d) Mitigation Plan. Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

(7) Discovery of Human Remains The following procedures shall be effected when human remains are discovered during a cultural resource sur-

vey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

(a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.

(b) Notification. Local law enforcement officials, the Executive Director, and the Indian tribal governments shall be contacted immediately.

(c) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.

(d) Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.

(e) Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic. If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs". The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" are met and the mitigation plan is executed.

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0560

General Management Area Wetland Review Criteria

(1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands

(a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the Corps of Engineers Wetlands Delineation Manual (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997).

(B) All wetline delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.

(C) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the applicant's expense, obtain professional services to render a final delineation.

(b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:

(A) A site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) The exact boundary of the wetland and the wetlands buffer zone;

and

(C) A description of actions that would alter or destroy the wetland.

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within wetlands and their buffer zones.

(2) Commission Rule 350-81-560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-81, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-81-560(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:

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(a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:

(A) Increase the size of an existing structure by more than 100 percent.

(B) Result in a loss of wetlands acreage or functions, and

(C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-560(2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to 350-81-560(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and county laws.

(6) Applications for all other Review Uses in wetlands shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

(A) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;

(B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and

(C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist. An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

(b) The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:

(A) The extent of public need for the proposed use.

(B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.

(C) The functions and size of the wetland that may be affected.

(D) The economic value of the proposed use to the general area.

(E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

(c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts. The following wetlands restoration, creation, and enhancement guidelines shall apply:

(A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

(i) Restoration: 2:1

(ii) Creation: 3:1

(iii) Enhancement: 4:1

(E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.

(G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

(7) Wetlands Buffer Zones

(a) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(b) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.

(A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

(B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.

(C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and non-woody vines.

(c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

(A) Forest communities: 75 feet

(B) Shrub communities: 100 feet

(C) Herbaceous communities: 150 feet

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(d) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(8) Wetlands Compensation Plans Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

(a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.

(e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0570

General Management Area Stream, Pond, Lake and Riparian Area Review Criteria

(1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas

(a) If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation.

(b) In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include:

(A) A site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) The exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and

(C) A description of actions that would alter or destroy the stream, pond, lake, or riparian area.

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within streams, ponds, lakes, riparian areas and their buffer zones.

(2) Commission Rule 350-81-570 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area.

(3) The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant 350-81-570(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or

(C) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-074, 350-81-570(2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to 350-81-570(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and local laws.

(6) Applications for all other Review Uses in streams, ponds, lakes, and riparian areas shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by 350-81-560(6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.

(b) The proposed use is in the public interest as determined by 350-81-560(6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.

(c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

At a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

(A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.

(B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.

(C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.

(F) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

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(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement. Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required. The following rehabilitation and enhancement guidelines shall apply:

(A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.

(B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.

(C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.

(D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.

(E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.

(F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.

(G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.

(H) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.

(7) Stream, Pond, and Lake Buffer Zones

(a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet

(B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet

(C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by 350-81-560(7)(b), substituting the term pond or lake as appropriate.

(b) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Executive Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

(8) Rehabilitation and Enhancement Plans Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance a stream, pond, lake and/or buffer area. They shall satisfy the following guidelines:

(a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.

(b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.

(c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope

percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.

(d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.

(e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0580

General Management Area Sensitive Wildlife Review Criteria

(1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife

(a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:

(A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:

Bald eagle habitat
Deer and elk winter range
Elk habitat
Mountain goat habitat
Peregrine falcon habitat
Pika colony area
Pileated woodpecker habitat
Pine marten habitat
Shallow water fish habitat (Columbia R.)
Special streams
Special habitat area
Spotted owl habitat
Sturgeon spawning area
Tributary fish habitat
Turkey habitat
Waterfowl area
Western pond turtle habitat

(B) "Sensitive wildlife sites" means sites that are used by animal species that are

(i) Listed as endangered or threatened pursuant to federal or state endangered species acts,

(ii) Listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,

(iii) Listed as sensitive by the Oregon Fish and Wildlife Commission, or

(iv) Considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, mountain goat, and prairie falcon).

Updated lists of species included in sensitive wildlife sites can be found on the websites for the Washington Department of Fish and Wildlife (Species of Concern list) and the Wildlife Division of Oregon Department of Fish and Wildlife. A list also is maintained by the USDA Forest Service – Scenic Area Office and available on the Gorge Commission website.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within 1000 feet of sensitive wildlife areas and sites.

(2) Field Survey

A field survey to identify sensitive wildlife areas or sites shall be required for:

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- (a) Land divisions that create four or more parcels;
- (b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;
- (c) Public transportation facilities that are outside improved rights-of-way;
- (d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and
- (e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to 350-81-580(4) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:

- (A) Identify/verify the precise location of the wildlife area or site,
- (B) Ascertain whether the wildlife area or site is active or abandoned, and

(C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

(b) The following factors may be considered when site plans are reviewed:

- (A) Biology of the affected wildlife species.
- (B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodricker and Milner, 1991).
- (C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.

(E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.

(c) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:

- (A) The sensitive wildlife area or site is not active, or
- (B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(d) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Executive Director will incorporate them into the development review order and the wildlife protection process may conclude.

(e) The project applicant shall prepare a wildlife management plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(f) The Executive Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will

have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the state wildlife agency in the land use review order.

Based on the comments from the state wildlife agency, the Executive Director will make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

The Executive Director shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

(5) Wildlife Management Plans

Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and mitigates temporary impacts to the wildlife area or site and/or buffer zone. Wildlife management plans shall meet the following guidelines:

(a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.

(b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.

(c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.

(d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.

(e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:

(A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.

(f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones. When a buffer zone has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

(g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions.

At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

(6) New fences in deer and elk winter range

(a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be

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the minimum necessary to meet the immediate needs of the project applicant.

(b) New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:

(A) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.

(B) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.

(C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.

(D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(e) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

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

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)

Stats. Implemented: ORS 196.150

Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08;

CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-081-0590

General Management Areas Rare Plant Review Criteria

(1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants

(a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are

(A) Endemic to the Columbia River Gorge and vicinity,

(B) Listed as endangered or threatened pursuant to federal or state endangered species acts, or

(C) Listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program. Updated lists of sensitive plant species can be found on the websites for the Oregon or Washington Natural Heritage Program. A list also is maintained by the USDA Forest Service – Scenic Area Office and available on the Gorge Commission website.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(c) Determination of potential effects to significant natural resources shall include consideration of cumulative effects of proposed developments within 1000 feet of rare plants.

(2) Field Survey A field survey to identify sensitive plants shall be required for:

(a) Land divisions that create four or more parcels;

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;

(c) Public transportation facilities that are outside improved rights-of-way;

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually. Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to 350-81-590(4), and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will iden-

tify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan. If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.

(b) The rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.

(c) New uses shall be prohibited within sensitive plant species buffer zones.

(d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with 350-81-078, the project applicant shall prepare a protection and rehabilitation plan pursuant to 350-81-590(5).

(e) The Executive Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order. Based on the comments from the Natural Heritage Program staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

(5) Protection and Rehabilitation Plans Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance. Protection and rehabilitation plans shall meet the following guidelines:

(a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.

(b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.

(c) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods. Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.

(e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.

(f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.

(g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:

(A) Describe the biology of sensitive plant species that will be affected by a proposed use.

(B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.

(C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.

(D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.

(6) Sensitive Plant Buffer Zones

(a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.

(b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.

(c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:

(A) Identifies the precise location of the sensitive plants,

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(B) Describes the biology of the sensitive plants, and

(C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival. All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

(d) The Executive Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Executive Director. The Executive Director shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order. Based on the comments from the Oregon or Washington Natural Heritage Program, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

Stat. Auth.: ORS 196.150, RCW 43.97.015 & 16 U.S.C. sec. 544c(b)
Stats. Implemented: ORS 196.150
Hist.: CRGC 1-2005, f. 5-17-05, cert. ef. 7-1-05; CRGC 1-2007, f. 11-1-07, cert. ef. 1-1-08; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

350-120-0050

Expedited Certification.

(1) In making a decision to certify a proposed grant or loan the Director shall:

(a) Consult with the applicant and such agencies as the Director deems appropriate, and

(b) Consider information submitted by the applicant and all other relevant information available.

(2) The Director shall approve a grant or loan for certification only if it is consistent with the purposes of the Act, the management plan, and land use ordinances adopted pursuant to the Act, and the following criteria:

(a) The project and activity shall be consistent with the economic development policies in the Management Plan;

(b) The project and activity shall be consistent with the Economic Development Plans for Oregon and Washington as amended from time to time by the states consistent with Section 11 (a) of the Scenic Area Act;

(c) The project shall not involve relocation of a business from one National Scenic Area community to another;

(d) The activity shall not involve program administration; and

(e) The project shall occur only in counties that have in effect land use ordinances found consistent by the Commission and concurred on by the Secretary.

(3) Within 14 days of acceptance of the application as complete, the Director shall issue a decision along with findings of fact and conclusions of law setting forth the basis for the decision.

(4) The Director shall mail a copy of the decision to the applicant, the Forest Service, the States of Oregon and Washington, the Indian Tribes with treaty rights in the Scenic Area, the planning director of the applicable county or city, and any person who requests a copy of the decision.

(5) The Director shall periodically report to the Commission about certifications approved and denied.

Stat. Auth.: ORS 196.150
Stats. Implemented: ORS 196.150, RCW 43.97.015 & 16 U.S.C. § 544 et seq.
Hist.: CRGC 1-2004, f. 2-24-04, cert. ef. 4-1-04; CRGC 1-2011, f. 3-23-11, cert. ef. 5-1-11

Department of Agriculture Chapter 603

Rule Caption: Creates Control Area for Arundo donax in Morrow and Umatilla Counties.

Adm. Order No.: DOA 8-2011(Temp)

Filed with Sec. of State: 3-17-2011

Certified to be Effective: 3-17-11 thru 9-13-11

Notice Publication Date:

Rules Adopted: 603-052-1207, 603-052-1212, 603-052-1215

Subject: Giant reed grass, Arundo donax, is a promising bio-energy crop but it can also be highly invasive. This regulation would allow for up to 400 acres of giant reed grass to be grown in Morrow and Umatilla Counties. Planting stock would have to be free of soil and accompanied by a phytosanitary certificate. Planting within mile of water bodies would be prohibited. Surveys for feral plants would be required and the contractor would have to post a bond of

\$1,000,000 to cover eradication if the crop escapes. This temporary rule is necessary because PGE has contracted for planting stock to begin arriving in Morrow County on March 19, 2011. ODA believes it is in the public interest to restrict the plantings and minimize the risk of Arundo donax becoming a noxious weed.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-1207

Definitions

As used in OAR 603-052-1207 to 603-052-1215 unless the context requires otherwise:

(1) “Giant Reed” or “Giant Cane Grass” means all parts of the plant species classified as Arundo donax L.

(2) “One hundred year flood plain of the Columbia River” means an area designated as a 100-year floodplain on the 2011 map of the Federal Emergency Management Agency (FEMA).

(3) State and County Noxious Weed Officials means Oregon Department of Agriculture Noxious Weed Program Manager and County Weed Supervisors.

(4) “Water” or “waters of the state” includes lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, wetlands as defined in ORS 196.800(16), inlets, canals, irrigation ditches, drainage ditches, and all other bodies of surface waters, natural or artificial, inland or coastal, fresh or salt, public or private, which are wholly or partially within or bordering the state or within its jurisdiction.

Stat. Auth.: ORS 561.190 & 570.405
Stats. Implemented: ORS 570.405
Hist.: DOA 8-2011(Temp), f. & cert. ef. 3-17-11 thru 9-13-11

603-052-1212

Intent, Purpose, and Evaluation of Field Trials

(1) Giant Reed (cane) grass, Arundo donax, is a promising bio-energy crop because of its very high biomass yield. It also is highly invasive in southern latitudes of the United States such as California, Texas, and Florida. It is the intent and purpose of OAR 603-052-1207 to 603-052-1215 to balance goals to develop new agricultural products and support renewable energy development from agricultural feedstocks while protecting natural resources and preventing the establishment of Giant Reed in riparian areas and the Columbia River system where, if Giant Reed were to become established, it could cause major negative impacts to the natural resources of the State of Oregon.

(2) The control area described in OAR 603-052-1207 to 603-052-1215 allows growth of Giant Reed only as provided in these rules to provide biomass for a test burn at the Portland General Electric Boardman Power Plant in 2012 or 2013. Additional research on cropping systems and control, as well as invasiveness assessments of Giant Reed, will also be conducted. This control area will be reevaluated before the end of 2013, based on data gathered from field trials and other sources, prior to reauthorization of the trial acreage or approval of any additional production acres.

Stat. Auth.: ORS 561.190 & 570.405
Stats. Implemented: ORS 570.405
Hist.: DOA 8-2011(Temp), f. & cert. ef. 3-17-11 thru 9-13-11

603-052-1215

Control Area

(1) As authorized by ORS 570.405, a control area is established in Morrow and Umatilla Counties to implement mitigation measures to reduce the risk of Giant Reed, spreading beyond production areas where Giant Reed is being produced for bio-fuel.

(2) Extent of Control Area: all of Morrow and Umatilla Counties.

(3) Commodities Covered: Giant Reed or Giant Cane Grass.

(4) Acreage Limit: A maximum total of 400 acres may be allowed for the planting and growth of Giant Reed.

(5) Prohibited Acts:

(a) Giant Reed is prohibited from being planted or grown within the one hundred year flood plain of the Columbia River or its tributaries.

(b) Giant Reed is prohibited from being planted or grown within one-quarter mile of any water or waters of the state.

(c) The Oregon State University Hermiston Research and Extension Center is exempted from the prohibition in subsections (a) and (b) of this section for the sole purpose of allowing research on Giant Reed at the Oregon State University Hermiston Research and Extension Center.

(6) Conditions of Planting and Growth:

(a) All contractors and persons growing Giant Reed shall provide to the Oregon Department of Agriculture and to county noxious weed control officials the specific locations, including maps, of all fields in Morrow or Umatilla Counties where Giant Reed is planted or grown.

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(b) Any equipment used in Giant Reed production fields must be cleaned free of soil and plant debris prior to removal from the production field.

(c) Root mass and rhizome material for establishing Giant Reed fields will be transported in closed containers to prevent establishment of wild infestations. Planting stock from out of state must be free of soil and must be accompanied by a phytosanitary certificate indicating that the stock has been inspected and found free of soil and harmful pests, diseases and weeds. Containers must be thoroughly cleaned to remove soil and plant debris or discarded in a manner that prevents pest/weed introduction.

(d) Giant reed biomass shall be transported in either covered trucks or rail cars to prevent leaves and canes from being lost during transport. Trucks or rail cars must be thoroughly cleaned to remove soil and plant debris after delivering their loads.

(e) Drying Giant Reed plant material in the field and baling of the material before transport, to prevent canes from being viable, is strongly encouraged.

(f) Any contractor contracting for the growth of Giant Reed grass or any growers of Giant Reed grass must work with State and County noxious weed officials to develop and implement any necessary surveys or other monitoring to detect the establishment of Giant Reed in any areas outside of fields where Giant Reed is planted or grown.

(g) Any contractor contracting for the growth of Giant Reed or any growers of Giant Reed must work with State and County noxious weed officials to develop and implement any necessary treatment plans to eradicate escaped or feral Giant Reed.

(h) Any and all expenses for the activities described in sections (f) and (g) shall be the responsibility of the contractor.

(i) Any contractor contracting for Giant Reed production shall cooperate with State and County noxious weed officials to perform annual detection surveys during the growing season to detect escaped or feral Giant Reed in "at-risk habitats" near giant reed grass production fields as identified by the Oregon Department of Agriculture or by County noxious weed officials. Annual surveys shall continue indefinitely in and around any and all active production and research sites where Giant Reed has been planted or grown. Escaped plants must be eradicated as soon as practically possible.

(j) Giant Reed in fields taken out of production must be eradicated so that unmanaged fields do not become a source of propagules that could lead to accidental spread of Giant Reed in the wild. Any and all expenses for the activities conducted pursuant to this subsection, including eradication and monitoring, shall be the responsibility of the contractor.

(7) Bond: Any contractor for the planting and growth of Giant Reed must post a bond of \$1,000,000 with the Department of Agriculture for the purpose of covering any and all costs associated with the eradication of Giant Reed either in fields where Giant Reed is grown or in any areas other than fields where Giant Reed is grown if the Department determines it is a noxious weed and must be eradicated in order to protect the agricultural or natural resources of the State. The bond must be in place for the duration of the trial plantings and three years beyond removal of the fields if the trial is terminated. In the event of ongoing production on a larger scale, a proportionally larger bond may be required.

Stat. Auth.: ORS 561.190 & 570.405

Stats. Implemented: ORS 570.405

Hist.: DOA 8-2011(Temp), f. & cert. ef. 3-17-11 thru 9-13-11

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**Department of Agriculture,
Oregon Dairy Products Commission
Chapter 617**

Rule Caption: Amend Administrative Rule OAR 617-030-0010 for Commissioner term limits.

Adm. Order No.: ODDC 1-2011

Filed with Sec. of State: 4-5-2011

Certified to be Effective: 4-5-11

Notice Publication Date: 3-1-2011

Rules Amended: 617-030-0010

Subject: Amends Administrative Rule for Commissioner term limits to four (4) consecutive three-year terms. A person who serves four (4) consecutive terms is not eligible for appointment to another term on the board until at least one year after the expiration of the fourth consecutive term.

Rules Coordinator: Pete Kent—(503) 229-5033

617-030-0010

Number of Commissioners, Terms

The Oregon Dairy Products Commission will consist of eight (8) commissioners appointed by the Director of the Oregon Department of Agriculture for a term of three (3) years. No commissioner will serve for more than four (4) full consecutive terms of office. A person who serves four (4) consecutive terms is not eligible for appointment to another term on the board until at least one year after the expiration of the fourth consecutive term.

Stat. Auth.: 2003 OL Ch. 604 & ORS 576

Stats. Implemented: 2003 OL Ch. 604 & ORS 576

Hist.: ODDC 1-2004, f. 1-2-04 cert. ef. 1-16-04; ODDC 1-2011, f. & cert. ef. 4-5-11

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

Rule Caption: Revises hours requirement for indirect supervision apprentice license.

Adm. Order No.: BCD 8-2011

Filed with Sec. of State: 3-30-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 3-1-2011

Rules Amended: 918-282-0270

Subject: Chapter 15, Section 1, 2010 Oregon Laws amended ORS 660.126 to allow electrical apprentices enrolled in a 6,000 hour program and who had completed 5,000 hours, to work under indirect supervision. OAR 918-282-0270 is being amended to be consistent with this statutory change.

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

918-282-0270

Apprentices

(1) An apprentice:

(a) Shall meet the following minimum requirements:

(A) General journeyman, Class A limited energy technician and Class B limited energy technician:

(i) Be 17 years of age to apply, 18 years of age to indenture;

(ii) Have a high school diploma, GED, or international equivalency;

and

(iii) Have one-year high school algebra, integrated math 2 or its equivalent, with a grade of "C" or better, or equivalent community college mathematics placement test results.

(B) Limited journeyman manufacturing plant, limited maintenance, limited journeyman sign, limited journeyman stage and limited renewable energy technician:

(i) Be 17 years of age to apply, 18 years of age to indenture;

(ii) Have a high school diploma, GED or international equivalency;

and

(iii) Have one-year high school mathematics with a passing grade, or equivalent community college mathematics placement test results;

(C) Limited residential:

(i) Be 17 years of age to apply, 18 years of age to indenture;

(ii) Have a high school diploma, GED, or international equivalency;

and

(iii) Have one-year high school algebra, integrated math 2 or its equivalent, with a grade of "C" or better, or one-year high school math and completion of an algebra course as part of an approved apprenticeship program, with a grade of "C" or better, or equivalent community college mathematics placement test results.

(b) Shall be licensed;

(c) Assists a journeyman, general supervising electrician, limited renewable energy technician or limited residential electrician on the same job site and the same shift in performing electrical work authorized in the trade, or branch of the trade, in which the licensee is indentured; and

(d) Is not authorized to perform electrical work under a person holding a letter of authority card issued to State of Oregon employees.

(2) Apprentice licenses:

(a) Shall be issued to individuals enrolled in formal electrical apprenticeship programs recognized by the board and the Oregon Bureau of Labor and Industries under ORS Chapter 660; and

(b) May be issued to trainees enrolled in individually approved, employer-sponsored training programs leading to the limited journeyman license in OAR 918-282-0190. Individuals enrolled in these programs may

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be issued an electrical apprentice license only if the employer's program is approved by the board.

(3) Notwithstanding subsection (1)(c) of this rule:

(a) A final term apprentice in an 8,000 hour apprenticeship program with at least 6,500 hours of on-the-job training may work under indirect supervision at the discretion of the responsible supervisor on projects not exceeding eight hours duration and limited to 300 volts phase to phase or phase to ground; or,

(b) A final term apprentice in a 6,000 hour apprenticeship program with at least 5,000 hours of on-the-job training may work under indirect supervision at the discretion of the responsible supervisor on projects not exceeding eight hours duration that are otherwise within the scope of the apprentice's license.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0980; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-320-0190; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 2-2008, f. 2-21-08, cert. ef. 4-1-08; BCD 8-2011, f. 3-30-11, cert. ef. 4-1-11

Rule Caption: Abolishing Temporary Apprenticeship Licenses (180 Day Rule).

Adm. Order No.: BCD 9-2011(Temp)

Filed with Sec. of State: 3-30-2011

Certified to be Effective: 4-1-11 thru 6-30-11

Notice Publication Date:

Rules Amended: 918-282-0270

Rules Suspended: 918-282-0280

Subject: The existing rule allows an electrical apprentice from another state that is party to the state apprenticeship reciprocal agreement to receive a temporary apprentice license to work in Oregon for a period not to exceed 180 days. The rule allows an apprentice to work on a single project up to 180 days. This license cannot be renewed.

This temporary rule would abolish OAR 918-282-0280, Temporary Apprentice Licenses, which imposes the 180-day time limit, single project, and non-renewal restrictions. The temporary rule would add provisions for reciprocal apprentices in OAR 918-282-0270, Apprentices, and clarify that reciprocal apprentices may work under indirect supervision if they meet the requirements for an indirect supervision card.

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

918-282-0270

Apprentices

(1) An apprentice:

(a) Shall meet the following minimum requirements:

(A) General journeyman, Class A limited energy technician and Class B limited energy technician:

(i) Be 17 years of age to apply, 18 years of age to be registered;

(ii) Have a high school diploma, GED, or international equivalency; and

(iii) Have one-year high school algebra, integrated math 2 or its equivalent, with a grade of "C" or better, or equivalent community college mathematics placement test results.

(B) Limited journeyman manufacturing plant, limited maintenance, limited journeyman sign, limited journeyman stage and limited renewable energy technician:

(i) Be 17 years of age to apply, 18 years of age to be registered;

(ii) Have a high school diploma, GED or international equivalency; and

(iii) Have one-year high school mathematics with a passing grade, or equivalent community college mathematics placement test results;

(C) Limited residential:

(i) Be 17 years of age to apply, 18 years of age to be registered;

(ii) Have a high school diploma, GED, or international equivalency; and

(iii) Have one-year high school algebra, integrated math 2 or its equivalent, with a grade of "C" or better, or one-year high school math and completion of an algebra course as part of an approved apprenticeship program, with a grade of "C" or better, or equivalent community college mathematics placement test results.

(b) Shall be licensed;

(c) May assist an appropriately licensed electrician on the same job site and the same shift in performing electrical work authorized in the trade, or branch of the trade, in which the licensee is registered; and

(d) Shall not perform electrical work under a person holding a letter of authority card issued to State of Oregon employees.

(2) Apprentice licenses issued under sections (3)(a), (4), or (5) of this rule are issued and renewed by the Oregon Bureau of Labor and Industries according to standards established in this rule and the guidelines established by the Building Codes Division.

(3) Electrical apprentice licenses:

(a) Shall be issued to individuals registered in formal electrical apprenticeship programs recognized by the board and the Oregon Bureau of Labor and Industries under ORS Chapter 660; and

(b) May be issued to trainees enrolled in individually approved, employer-sponsored training programs leading to the limited journeyman license in OAR 918-282-0190. Individuals enrolled in these programs may be issued an electrical apprentice license only if the employer's program is approved by the board.

(4) Reciprocal electrical apprentice licenses shall be issued to individuals currently registered in an approved apprenticeship training program outside Oregon in a state that is party to the state apprenticeship reciprocal agreement.

(5) Notwithstanding subsection (1)(c) of this rule, a final term apprentice licensed under sections (3)(a) or (4) of this rule that meets the requirements of this section may be issued an indirect supervision electrical apprentice license, allowing the apprentice to work under indirect supervision at the discretion of the responsible supervisor. A license under this section may be issued to:

(a) A final term apprentice in an 8,000 hour apprenticeship program with at least 6,500 hours of on-the-job training, allowing the apprentice to work under indirect supervision on projects not exceeding eight hours duration and limited to 300 volts phase to phase or phase to ground; or

(b) A final term apprentice in a 6,000 hour apprenticeship program with at least 5,000 hours of on-the-job training, allowing the apprentice to work under indirect supervision on projects not exceeding eight hours duration that are otherwise within the scope of the apprentice's license.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0980; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-320-0190; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 2-2008, f. 2-21-08, cert. ef. 4-1-08; BCD 8-2011, f. 3-30-11, cert. ef. 4-1-11; BCD 9-2011(Temp), f. 3-30-11, cert. ef. 4-1-11 thru 6-30-11

918-282-0280

Temporary Apprentice License

(1) A temporary electrical apprentice:

(a) Performs electrical work as a helper, learner or trainee not licensed or required to be licensed;

(b) Assists journeymen or general supervising electricians in electrical work within the State of Oregon at a specific job location for a period not exceeding 180 days;

(c) Shall be currently indentured in an approved apprenticeship training program outside Oregon; and

(d) Has been recommended through the state apprenticeship reciprocal agreement dated April 20, 1996, adopted by the Oregon Bureau of Labor and Industries.

(2) Upon written authorization from the Oregon Bureau of Labor and Industries Apprenticeship and Training Division, the division shall issue a temporary apprentice license showing the dates of temporary employment expiring 180 days from the date of issuance.

Stat. Auth.: ORS 479.630(14) & 479.680

Stats. Implemented: ORS 479.630 & 479.680

Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0990; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-320-0200; Suspended by BCD 9-2011(Temp), f. 3-30-11, cert. ef. 4-1-11 thru 6-30-11

Rule Caption: Establishes specialized inspector training and certifications as required by House Bill 3462 (2009).

Adm. Order No.: BCD 10-2011(Temp)

Filed with Sec. of State: 4-15-2011

Certified to be Effective: 5-1-11 thru 6-30-11

Notice Publication Date:

Rules Adopted: 918-098-1510, 918-098-1520, 918-098-1530, 918-098-1540, 918-098-1550, 918-098-1560, 918-098-1570

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Subject: HB 3462 (2009) authorized the Building Codes Division to create a program for training, qualifying and certifying individuals as specialized building inspectors authorized to perform inspections and enforce portions of Oregon's specialty codes. These new inspector certifications will cover limited commercial and other multidisciplinary inspections that presently are not independently authorized by the Division's existing inspector certifications.

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

918-098-1510

Purpose and Scope

(1) The specialized inspector certification program, in OAR 918-098-1510 through 918-098-1570, establishes a program for training, qualifying and certifying individuals as specialized building inspectors authorized to perform inspections and enforce portions of the state building code. Inspector certifications cover limited commercial and other multidisciplinary inspections that presently are not independently authorized by the division in existing inspector certifications.

(2) Specialized inspectors may, after receiving certification issued under these rules, conduct inspections as provided in these rules. These rules apply to applicants and certificate holders, training providers, and participating jurisdictions for the purposes of administering and enforcing the restrictions and requirements under these rules.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11

918-098-1520

Specialized Inspector Qualifications

(1) All applicants for specialized certifications must have:

(a) A valid Oregon Inspector Certification;

(b) A valid Oregon Code Certification to perform inspections, as identified in the rule requirements for the specialized certification sought;

(c) Employment as an inspector and experience performing inspections in Oregon for a minimum of one year in the specialty code area that the applicant is seeking specialized certification.

(2) An applicant for certification as a specialized inspector must:

(a) Submit an application on a division-approved form.

(b) Submit the designated application and training fees.

(c) Identify the certifications sought, the certifications presently held by the applicant, and the applicant's qualifying experience performing inspections.

(3) Incomplete applications or applications submitted without payment will not be processed.

(4) If an application is approved, the applicant will be notified and may begin the specialized inspector certification process.

(5) When an application is not approved by the division, the applicant's training fee will be refunded. The application fee will not be refunded or waived for future applications.

(6) The application and training fee for all specialized inspector certifications is \$200.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11

918-098-1530

Training Programs

(1) Approved applicants must complete an appropriate division-approved training program and pass a division-approved examination for the desired specialized certification. Training program requirements are stated in OAR 918-098-1560 for the Specialized Solar Photo-Voltaic Inspector Certification and in OAR 918-098-1570 for the Specialized Plumbing Inspector Certification.

(2) Instructor Qualifications. Specialized certification training course instructors must be approved by the division under these rules.

(a) Training course instructors may apply for approval as part of the course approval process or independent of the course approval process.

(b) Approved training course instructors must be qualified by training, licensure, and experience to teach the subject matter and supervise the corresponding fieldwork training inspections of a specialized inspector certification training program.

(c) Approved fieldwork supervisors must be qualified by training, licensure, and experience to perform the specialized inspector certification fieldwork inspections being performed.

(d) Division staff teaching training courses of supervising related fieldwork in the normal course of their duties are considered approved instructors for the purposes of these rules.

(3) Fieldwork Training. A specialized inspector certification applicant is eligible to perform the required fieldwork training after the applicant has begun the required academic coursework and has been approved by the course instructor to begin fieldwork training.

(4) Fieldwork Supervision. All specialized certification fieldwork training must be supervised and verified by an inspector with a valid Oregon Inspector Certification required to conduct the inspections being performed.

(a) An applicant's fieldwork training must be documented on a division-approved form and signed by the inspector who supervised the inspections.

(b) An inspector supervising and verifying an applicant's fieldwork training may not be qualified to conduct the inspections performed based solely on a specialized inspector certification issued according to these rules.

(5) Fieldwork Training Approval. A specialized inspector certification applicant must submit proof of completed fieldwork training to the division for verification and approval, and issuance of specialized inspector certification.

(6) Examination Approval. A specialized inspector certification applicant is eligible to take a certification examination after the division receives proof that the applicant has successfully completed the required academic coursework and fieldwork training.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11

918-098-1540

Specialized Inspector Examination

(1) Examinations for a specialized inspector certification must be approved by the division.

(2) Applicants for specialized inspector certifications who fail the examination may reapply to retest by submitting a reapplication form and required \$80 fee within 30 days after the failed attempt.

(3) If an applicant fails to take a specialized inspector certification examination within 60 days of being approved to do so, the applicant must reapply to the division to take the examination by submitting a reapplication form and required \$80 fee.

(4) An applicant who reapplies is not required to requalify for the examination or provide qualification information in addition to the exam application unless the specialized certification requirements have changed since the applicant originally applied for certification.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11

918-098-1550

Specialized Inspector Certification Issuance and Expiration

(1) Upon receiving proof of completion of all requirements listed in these rules, the division may issue the appropriate specialized inspector certification.

(2) All specialized certifications remain valid until January 2, 2018, if the holder maintains a current Oregon Inspector Certification. Should the holder fail to maintain a valid Oregon Inspector Certification, all certifications, including any specialized certification issued under this rule, become invalid and the holder may not conduct any inspections until the Oregon Inspector Certification is again valid.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11

918-098-1560

Specialized Solar Photo-Voltaic Inspector Certification

(1) Specialized solar photo-voltaic (PV) inspectors may, upon receipt of this certification, conduct inspections of the structural and electrical systems for solar PV installations up to 25 Kw that follow the "prescriptive installation" provisions in section 305.4 of the **Oregon Solar Installation Specialty Code**.

(2) As a condition of entering a training program, an applicant must:

(a) Hold a valid Oregon Code Certification as either an electrical code inspector or residential electrical inspector;

(b) Have been employed as an inspector and performed inspections as an electrical code inspector or residential electrical inspector for a minimum of one year prior to applying for Specialized Solar PV Inspector Certification;

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(c) Complete a specialized solar PV inspection training program that meets the minimum requirements established by the division, consisting of:

- (A) Instructional coursework; and
- (B) Supervised fieldwork inspections; and
- (d) Pass a division-approved examination.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11

918-098-1570

Specialized Plumbing Inspector Certification

(1) Specialized plumbing inspectors may inspect plumbing and piping systems conveying potable water, storm, or domestic sanitary sewage in buildings less than 75 feet above grade in height as defined in the **Oregon Structural Specialty Code** and containing a building water service less than two inches in nominal interior diameter.

(2) A specialized plumbing inspector may not conduct inspections in new structures with plumbing or piping systems containing any of the items in (a) through (g):

(a) Installation or alteration of a medical gas and vacuum system for health care facilities;

(b) Installation or alteration of chemical drainage, waste and vent systems containing chemical agents potentially detrimental to the integrity of a plumbing system;

(c) Installation or alteration of waste water pre-treatment systems for building sewers;

(d) Installation of vacuum drainage, waste and vent systems;

(e) Installation or alteration of reclaimed water systems;

(f) Installation of a commercial booster pump system needed to maintain minimum residual water pressure in a structure supplied by a municipal source; or

(g) Food service plumbing systems.

(3) Existing structures with plumbing systems containing any of the items in (2)(a) through (g) may be inspected by specialized plumbing inspectors. But specialized plumbing inspectors may not inspect any of the items in (2)(a) through (g).

(4) As a condition of entering a training program, an applicant must:

(a) Hold valid Oregon Code Certification as a one- and two-family or residential plumbing inspector;

(b) Have been employed as an inspector and performed inspections as a one- and two-family or residential plumbing inspector for a minimum of one year prior to applying for Specialized Plumbing Inspector Certification.

(c) Complete a specialized plumbing inspection training program that meets the minimum requirements established by the division, consisting of:

(A) Instructional coursework; and

(B) Supervised fieldwork inspections.

(d) Pass a division-approved examination.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 10-2011(Temp), f. 4-15-11, cert. ef. 5-1-11 thru 6-30-11

Rule Caption: Amends 2008 Oregon Residential Specialty Code regarding alternate braced wall panels.

Adm. Order No.: BCD 11-2011(Temp)

Filed with Sec. of State: 4-15-2011

Certified to be Effective: 4-15-11 thru 9-30-11

Notice Publication Date:

Rules Amended: 918-480-0010

Subject: This temporary rule amends 2008 Oregon Residential Specialty Code, Section R602.10.6.2 alternate braced wall panel adjacent to door or window opening. This temporary rule removes the requirement for a 4,200 pound tie-down and adjusts the panel size to compensate for this change.

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

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 April 1, 2011, the **2008 Oregon Residential Specialty Code** is amended for the purposes of adopting Section R326, requirements for carbon monoxide alarms.

(10) Effective April 1, 2011, **Appendix N** of the **2010 Oregon Structural Specialty Code** is amended for the purpose of adopting the carbon monoxide alarm requirements in **2008 Oregon Residential Specialty Code**, Section R326.

(11) Effective April 15, 2011, Section R602.10.6.2 alternate braced wall panel adjacent to a door or window opening is amended for tie-down devices.

NOTE: The amendments are published in their entirety in Table 2-R beginning on page 9.

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

[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 Reformating 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; BCD 1-2011, f. & cert. ef. 2-15-11; BCD 11-2011(Temp), f. & cert. ef. 4-15-11 thru 9-30-11

Department of Corrections Chapter 291

Rule Caption: Mental Health Special Housing for Inmate in ODOC Institutions.

ADMINISTRATIVE RULES

Adm. Order No.: DOC 6-2011

Filed with Sec. of State: 3-31-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 1-1-2011

Rules Adopted: 291-048-0230, 291-048-0240, 291-048-0270, 291-048-0280, 291-048-0320

Rules Repealed: 291-048-0120, 291-048-0180, 291-048-0230(T), 291-048-0240(T), 291-048-0270(T), 291-048-0280(T), 291-048-0320(T), 291-048-0100 to 291-048-0200(T), 291-048-0110 to 291-048-0210(T), 291-048-0115 to 291-048-0220(T), 291-048-0130 to 291-048-0250(T), 291-048-0140 to 291-048-0260(T), 291-048-0150 to 291-048-0290(T), 291-048-0160 to 291-048-0300(T), 291-048-0170 to 291-048-0310(T), 291-048-0190 to 291-048-0330(T)

Rules Ren. & Amend: 291-048-0100 to 291-048-0200, 291-048-0110 to 291-048-0210, 291-048-0115 to 291-048-0220, 291-048-0130 to 291-048-0250, 291-048-0140 to 291-048-0260, 291-048-0150 to 291-048-0290, 291-048-0160 to 291-048-0300, 291-048-0170 to 291-048-0310, 291-048-0190 to 291-048-0330

Subject: The department recognizes there are inmates in its facilities with significant mental health issues. Modification of these rules is necessary to safely manage and provide an environment oriented to mental health treatment of this high-risk inmate population. Mental Health Special Housing is separate and apart from the general inmate population. These rules establish policy and procedures for assignment of an inmate to mental health special housing who, because of mental health issues, is unable to adjust in the general inmate population.

Rules Coordinator: Janet R. Worley — (503) 945-0933

291-048-0200

Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish department policy and procedures for the assignment of inmates to mental health special housing who, because of a mental illness or severe emotional disturbance, are unable to adjust satisfactorily in the general inmate population.

(3) Policy: The department recognizes there are a number of inmates with significant mental health issues. It is the policy of the Department of Corrections to:

(a) Provide an environment oriented to mental health treatment for inmates within the department who, because of mental illness or severe emotional disturbance, are behaving in such a way as to endanger themselves or others or are unable to provide for their basic needs; and

(b) Adopt practices within this environment to safely manage this high risk inmate population where effective treatment and behavior management can occur.

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

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

Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-1984; CD 20-1984(Temp), f. & ef. 11-6-84; CD 4-1985, f. & ef. 5-16-85; CD 27-1985, f. & ef. 8-16-85; CD 19-1987, f. & ef. 3-5-87; CD 4-1988, f. & cert. ef. 3-21-88; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0005; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0100 by DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; Renumbered from 291-048-0100 by DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0210

Definitions

(1) Behavior Health Services (BHS): A Health Services unit with primary responsibility for the assessment and treatment of inmates with mental illness and developmental disabilities.

(2) Behavioral Health Unit: An intensive behavioral management and skills training unit for inmates with serious mental illness that have committed violent acts or disruptive behavior.

(3) BHS Program Manager: That person who reports to the Behavior Health Services administrator and has responsibility for delivery of program services or coordination of program operations in a mental health special housing unit. Whenever the term "BHS program manager" is used in this rule it means BHS program manager or designee.

(4) Facility: The building and grounds area operated by the Department of Corrections which physically houses inmates.

(5) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an assistant

director, or an administrator and has responsibility for the delivery of program services or coordination of program operations. Whenever the term "functional unit manager" is used in this rule it means functional unit manager or designee. In these rules for mental health special housing, the "functional unit manager" is the superintendent of the institution.

(6) Intermediate Care Housing (ICH): A mental health special housing unit with a therapeutic environment for mental health step down from a Mental Health Infirmiry; a stabilization unit for inmates who cycle in and out of a Mental Health Infirmiry.

(7) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(8) Mental Health Infirmiry (MHI): A crisis response unit that provides psychiatric care and a therapeutic environment for inmates that require intensive assessment, care, and stabilization.

(9) Mental Health Specialist: Any person who reports to the BHS administrator and has the responsibility for delivery of mental health program services in a facility.

(10) Mental Health Special Housing: A housing assignment separate and apart from the general population, including facilities, rooms, or cells for inmates that are unable to adjust satisfactorily to the general inmate population because of a serious mental illness. Mental health special housing includes a Mental Health Infirmiry, Intermediate Care Housing, and Behavioral Health Unit.

(11) Mental Health Special Housing (MHS) Custody Manager: That person designated by the functional unit manager who is responsible for security in a mental health special housing unit and for making operational decisions in accordance with policy, rule, or procedure. Whenever the term "mental health special housing custody manager" is used in this rule it means the mental health special housing custody manager or designee.

(12) Mental Health Treatment Team: A team that may consist of the unit program manager(s), psychiatrist or nurse practitioner, nurse, mental health specialist, MHS custody manager, represented custody staff members and other designated staff. The purpose of this group is to:

(a) Assess the mental condition of inmates assigned to a mental health special housing unit;

(b) Establish and update treatment plans for these inmates, and

(c) Coordinate their discharge and mental health follow-up.

(13) Reasonable Grounds: Information that is of such credibility that it would induce a reasonably prudent person to use it in the conduct of their affairs.

(14) Serious Mental Illness: An inmate that, in the judgment of the department, because of a mental disorder is one or more of the following:

(a) Dangerous to self or others;

(b) Unable to provide for basic personal needs and would likely benefit from receiving additional care for the inmate's health or safety;

(c) Chronically mentally ill, as defined in ORS 426.495; or

(d) Will continue, to a reasonable medical probability, to physically or mentally deteriorate so to become a person described in (c) above unless treated.

(15) Special Population Management Committee (SPM): A committee that is composed of at least three department staff to include a representative from institution operations, Behavior Health Services, and the Office of Population Management.

(16) Treating Practitioner: Any Health Services employee who, by licensure, is authorized to prescribe treatment, including but not limited to, physicians, nurse practitioners and physicians assistants.

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

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

Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-84; CD 20-1984(Temp), f. & ef. 11-6-84; CD 4-1985, f. & ef. 5-16-85; CD 27-1985, f. & ef. 8-16-85; CD 19-1987, f. & ef. 3-5-87; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0010; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0110 by DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; Renumbered from 291-048-0110 by DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0220

Selection and Training of Staff for Mental Health Special Housing

(1) Selection Criteria: For positions that are solely assigned to mental health special housing:

(a) Custody staff must have successfully completed trial service;

(b) All staff requesting to work in mental health special housing will be reviewed and must receive a satisfactory appraisal by a committee designated the functional unit manager before assignment to the unit. At a minimum, the staff member must meet the following criteria:

(A) Have expressed a constructive interest in working with inmates in mental health special housing;

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(B) Have demonstrated the ability to work with inmates through conflict-reducing and conflict-control skills; and

(C) Have demonstrated the ability to use good judgment.

(2) Mental health special housing positions will be made by the functional unit manager and will be reviewed as needed.

(3) Mental Health Special Housing Position Rotations: Rotation of staff may occur as it is found to be in the best interest or well being of the employee, or the operation of the unit, upon determination by a committee designated the functional unit manager.

(4) Training of Assigned Personnel: All employees assigned to work in a mental health special housing unit are required to annually complete a minimum number of 12 training hours specific to mental health special housing, in addition to any other department training requirements.

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

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

Hist.: CD 15-1984, f. & ef. 7-20-84; CD 4-1985 f. & ef. 5-16-85; CD 27-1985, f. & ef. 8-16-85; CD 19-1987, f. & ef. 3-5-87; CD 37-1987(Temp), f. & ef. 9-24-87; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; Suspended by DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0115 by DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; Renumbered from 291-048-0115 by DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0230

Recommendation and Referral Process to a Mental Health Special Housing Unit

(1) An inmate that, in the judgment of the department, meets one or more of the following conditions because of a mental illness should be considered for assignment to mental health special housing:

(a) A danger to others;

(b) A danger to self (including all inmates who are acutely suicidal);

(c) Unable to care for his/her basic needs;

(d) In an acute phase of mental or emotional disorder; or

(e) Needs a diagnostic evaluation or medication adjustment.

(2) If any staff member thinks an inmate is in need of mental health treatment in mental health special housing, the concerned staff member may submit a recommendation for a mental health evaluation.

(3) A mental health specialist shall complete an evaluation of the inmate within five calendar days.

(4) If the mental health specialist recommends placement, he/she will make the appropriate referral.

(5) Upon completion of the evaluation, the inmate will be assigned to a mental health special housing unit or be returned to his/her former status if assignment to mental health special housing is not needed.

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

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

Hist.: DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0240

Mental Health Special Housing Assignment

(1) An inmate will be assigned to a mental health special housing unit based on the least restrictive environment that satisfies the needed level of care.

(2) Mental health special housing includes Mental Housing Infirmiry, Intermediate Care Housing, and the Behavioral Health Unit. The assignment process varies dependent on the specific unit.

(a) Assignment to a Mental Health Infirmiry will be made in accordance with OAR 291-048-0250 to 0260.

(b) Assignment to Intermediate Care Housing will be made in accordance with OAR 291-048-0270

(c) Assignment to a Behavioral Health Unit will be made in accordance with OAR 291-048-0280

(3) Once an inmate has been assigned to a mental health special housing unit, the inmate may be assigned to other mental health special housing units for treatment as deemed necessary or advisable by the mental health treatment team. However, an inmate may only be assigned to a Mental Health Infirmiry by order of the treating practitioner.

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

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

Hist.: DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0250

Voluntary Assignment to a Mental Health Infirmiry

(1) An inmate may be voluntarily placed in a Mental Health Infirmiry when:

(a) There is a referral from an institution mental health specialist, nurse, or outside mental health contractor; and

(b) The mental health treatment team finds that the inmate is in need of mental health treatment; and

(c) There is reasonable likelihood that treatment can be accomplished in a Mental Health Infirmiry; and

(d) The inmate consents to admission in writing.

(2) The treating practitioner shall make the final decision whether an inmate is admitted to a Mental Health Infirmiry for treatment.

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

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

Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-84; CD 20-1984(Temp), f. & ef. 11-6-84; CD 4-1985, f. & ef. 5-16-85; CD 19-1987, f. & ef. 3-5-87; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0015; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0130 by DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; Renumbered from 291-048-0130 by DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0260

Involuntary Assignment to a Mental Health Infirmiry

(1) Emergency:

(a) An inmate may be involuntarily assigned to a Mental Health Infirmiry for evaluation for a period not to exceed five working days by order of the BHS program manager, treating practitioner, or functional unit manager, only upon a finding of reasonable grounds.

(b) The decision to place an inmate in a Mental Health Infirmiry will be based on the recommendation of the mental health staff, psychologist, the Medical Services manager, or available program staff. Other pertinent staff reports may also be considered.

(c) If the inmate is placed in a Mental Health Infirmiry on an emergency basis, the functional unit manager shall inform the inmate in writing.

(d) Assessment: Within five working days following assignment to a Mental Health Infirmiry, the mental health treatment team will assess the need for treatment. The following mental health data shall be considered by the treating practitioner in making the assessment:

(A) Existence and type of disorder;

(B) Potential therapeutic effect of a change in environment;

(C) Potential for development of a comprehensive program for treatment of the inmate that is available within a Mental Health Infirmiry and is likely to benefit the inmate;

(D) Ability to function in the general population; and

(E) Any other factors substantially related to the mental health of the inmate as applicable, including staff observation, individual diagnostic interviews and tests assessing intellect and coping abilities.

(e) Upon completion of the assessment and compilation of the inmate's mental health history:

(A) If the mental health treatment team determines the inmate is not in need of the level of care in a Mental Health Infirmiry, the inmate will be returned to his/her former status or referred to mental health treatment as appropriate.

(B) If the mental health treatment team determines the inmate is in need of the level of care in a Mental Health Infirmiry, an overall treatment plan will be developed with appropriate referral as needed.

(f) The inmate will be given the opportunity to voluntarily admit himself/herself to a Mental Health Infirmiry.

(g) If the inmate is unwilling to be voluntarily admitted, the treating practitioner may admit the inmate on an involuntary basis.

(A) The treating practitioner will notify and deliver a copy of the Notice of Emergency/Involuntary Assignment to Mental Health Special Housing (CD 1567) to the functional unit manager.

(B) The functional unit manager will notify the hearings officer.

(C) The hearings officer will make arrangements to conduct an involuntary assignment hearing as outlined in OAR 291-048-0290 within five working days after completion of the evaluation.

(2) Non-Emergency:

(a) If an inmate is thought by any staff member to be in need of mental health treatment in a Mental Health Infirmiry, the concerned staff member may submit a recommendation for a mental health evaluation as described in OAR 291-048-0230.

(b) If the mental health specialist recommends placement in Mental Health Infirmiry, admission consideration will follow as provided in section (1)(d)(A)–(E) of this rule, with notification to the functional unit manager.

(c) The inmate will be given the opportunity to voluntarily admit himself/herself to a Mental Health Infirmiry. If the inmate is unwilling to be voluntarily admitted, the treating practitioner may admit the inmate on an involuntary basis.

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(A) The treating practitioner will notify and deliver a copy of the Notice of Emergency/Involuntary Assignment to Mental Health Special Housing (CD 1567) to the functional unit manager.

(B) The functional unit manager will notify the hearings officer.

(C) The hearings officer will make arrangements to conduct an involuntary assignment hearing as outlined in OAR 291-048-0290 within five working days after completion of the evaluation.

(3) Recommended Length of Stay: In all instances where assignment is recommended, the treating practitioner will include a recommendation for the length of stay in a Mental Health Infirmary, not to exceed 180 days.

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

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

Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-84; CD 20-1984(Temp), f. & ef. 11-6-84; CD 4-1985, f. & ef. 5-16-1985; CD 27-1985, f. & ef. 8-16-85; CD 19-1987, f. & ef. 3-5-87; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0020; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0140 by DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; Renumbered from 291-048-0140 by DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0270

Assignment to Intermediate Care Housing

(1) An inmate may be assigned to Intermediate Care Housing based on a referral from a mental health specialist. An inmate may be referred if:

(a) It is determined at release from a MHI that the inmate requires additional stabilization prior to placement into a less restrictive environment;

(b) It is determined at intake that the inmate does not have the basic coping skills to be placed directly into a less restrictive environment;

(c) It is determined during the inmate's incarceration that he or she will have an increase in symptoms in a less restrictive environment if he or she is not provided a higher level of treatment and support; or

(d) The inmate demonstrates high risk for suicide or frequent self-harm.

(2) An inmate may be placed in Intermediate Care Housing when:

(a) There is a referral from a mental health specialist, nurse, or outside mental health contractor;

(b) The mental health treatment team finds that the inmate is in need of mental health treatment; and

(c) There is a reasonable likelihood that treatment can be accomplished in Intermediate Care Housing.

(d) The BHS program manager shall make the final decision whether an inmate is admitted to Intermediate Care Housing for treatment.

(3) Assessment: Within five working days following assignment to Intermediate Care Housing, the mental health treatment team will assess the need for treatment. The following mental health data shall be considered by the BHS program manager in making the assessment:

(a) Existence and type of disorder;

(b) Potential therapeutic effect of a change in environment;

(c) Potential for development of a comprehensive program for treatment of the inmate that is available within Intermediate Care Housing and is likely to benefit the inmate;

(d) Ability to function in the general population; and

(e) Any other factors substantially related to the mental health of the inmate as applicable, including staff observation, individual diagnostic interviews and tests assessing intellect and coping abilities.

(4) Upon completion of the assessment and compilation of the inmate's mental health history:

(a) If the mental health treatment team determines the inmate is not in need of the level of care in Intermediate Care Housing, the inmate will be returned to his/her former status or referred to mental health treatment as appropriate.

(b) If the mental health treatment team determines the inmate is in need of the level of care in Intermediate Care Housing, an overall treatment plan will be developed with appropriate referral as needed.

(c) The inmate will be given the opportunity to voluntarily admit himself/herself to Intermediate Care Housing.

(d) If the inmate is unwilling to be voluntarily admitted, the BHS program manager may admit the inmate on an involuntary basis.

(A) If the inmate has previously been assigned to a mental health special housing unit on an involuntary basis within the last 180 days, the inmate may be assigned to Intermediate Care Housing without any further action.

(B) If the inmate has not previously been assigned to a mental health special housing unit on an involuntary basis, the BHS program manager will notify and deliver a copy of the Notice of Emergency/Involuntary Assignment to Mental Health Special Housing (CD 1567) to the functional unit manager.

(C) The functional unit manager will notify the hearings officer.

(D) The hearings officer will make arrangements to conduct an involuntary assignment hearing as outlined in OAR 291-048-0290 within five working days after completion of the assessment.

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

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

Hist.: DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0280

Assignment to a Behavioral Health Unit

(1) An inmate may be assigned to a Behavioral Health Unit if the inmate has committed violent acts or disruptive behavior and is diagnosed with a serious mental illness. An inmate may be referred if:

(a) The inmate has committed violent or disruptive disciplinary actions in either general housing or special housing units and is placed in temporary disciplinary segregation in accordance with OAR 291-105; or

(b) A hearings officer recommends assignment to a Behavioral Health Unit as a diversion to a disciplinary segregation sanction in accordance with OAR 291-105; or

(c) The inmate is being considered for placement in an Intensive Management Unit in accordance with OAR 291-055 and the Special Population Management (SPM) Committee recommends assignment to a Behavioral Health Unit.

(2) An inmate may be placed in a Behavioral Health Unit when:

(a) There is a referral from a mental health specialist, nurse, or outside mental health contractor;

(b) The mental health treatment team finds that the inmate is in need of mental health treatment; and

(c) There is a reasonable likelihood that treatment can be accomplished in a Behavioral Health Unit.

(d) The BHS program manager shall make the final decision whether an inmate is admitted to a Behavioral Health Unit for treatment.

(3) Assessment: Within five working days following assignment to a Behavioral Health Unit, the mental health treatment team will assess the need for treatment. The following mental health data shall be considered by the BHS program manager in making the assessment:

(a) Existence and type of disorder;

(b) Potential therapeutic effect of a change in environment;

(c) Potential for development of a comprehensive program for treatment of the inmate that is available within a Behavioral Health Unit and is likely to benefit the inmate;

(d) Ability to function in an Intensive Management Unit or disciplinary segregation; and

(e) Any other factors substantially related to the mental health of the inmate as applicable, including staff observation, individual diagnostic interviews and tests assessing intellect and coping abilities.

(4) Upon completion of the assessment and compilation of the inmate's mental health history:

(a) If the mental health treatment team determines the inmate is not in need of the level of care in a Behavioral Health Unit, the inmate will be returned to his/her former status, assigned to an Intensive Management Unit or assigned to disciplinary segregation.

(b) If the mental health treatment team determines the inmate is in need of the level of care in a Behavioral Health Unit, an overall treatment plan will be developed with appropriate referral as needed.

(c) The inmate will be given the opportunity to voluntarily admit himself/herself to a Behavioral Health Unit.

(d) If the inmate is unwilling to be voluntarily admitted, the BHS program manager may admit the inmate on an involuntary basis.

(A) If the inmate has previously been assigned to a mental health special housing unit on an involuntary basis within the last 180 days, the inmate may be assigned to a Behavioral Health Unit without any further action.

(B) If the inmate has not previously been assigned to a mental health special housing unit on an involuntary basis, the BHS program manager will notify and deliver a copy of the Notice of Emergency/Involuntary Assignment to Mental Health Special Housing (CD 1567) to the functional unit manager.

(C) The functional unit manager will notify the hearings officer.

(D) The hearings officer will make arrangements to conduct an involuntary assignment hearing as outlined in OAR 291-048-0290 within five working days after completion of the assessment.

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

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

Hist.: DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

ADMINISTRATIVE RULES

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

Hist.: CD 5-1981, f. & ef. 4-3-81; CD 15-1984, f. & ef. 7-20-84; CD 4-1988, f. & cert. ef. 3-21-88; CD 3-1996, f. 4-26-96, cert. ef. 5-1-96; DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99, Renumbered from 291-048-0030; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0160 by DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; Renumbered from 291-048-0160 by DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0310

Provision of Basic Services and Programs in Mental Health Special Housing

(1) Mental health special housing shall be under the clinical supervision of the BHS program manager and the operational supervision of the MSHS custody manager.

(2) An inmate in mental health special housing may be given special security housing upon recommendation of the mental health treatment team for a specified period of time, and may not be permitted out of their assigned cell/room except when in actual custody of a custody staff member.

(3) Basic services and programs shall be determined by the mental health treatment team. The manner in which services and programs are provided may differ from the way they are provided to inmates in general population, if providing them in a routine manner would cause an immediate and continuing threat to the security of the facility or the safety of its staff or others.

(4) The mental health treatment team will develop, implement, or modify each individual inmate's treatment. A review of the inmate's treatment plans will occur as clinically indicated.

(a) The plan will have a specific set of objectives to meet in a progression of increasing personal responsibility. The treatment plan must be written, and a copy given to each inmate with whom the treatment plan is developed. A review of treatment plans will occur every 30 days or as clinically indicated.

(b) A treatment plan may include, but is not limited to, a structured daily schedule for that individual inmate different from the unit schedule based on that inmate's individual needs.

(5) Mental health special housing staff may temporarily withhold a basic service previously approved to an inmate in mental health special housing if he/she has sufficient reason to believe the security of the facility, its staff or others is in immediate danger.

(a) The MSHS custody manager shall be informed as soon as is reasonable of any service or program that is withheld.

(b) All such actions directly affecting an inmate's individual treatment must be reported to the BHS program manager by the following work day.

(c) The mental health treatment team must review any basic service or program that is withheld continuously.

(6) Psychiatric treatment or any type of psychotropic drugs administered to an inmate assigned to mental health special housing shall be in accordance with the Department of Corrections rule on Informed Consent to Treatment (OAR 291-064).

(7) All psychotropic medication administered to inmates housed in mental health special housing shall be prescribed by a licensed treating practitioner. All prescribed medication shall be administered by a nurse licensed to administer medication.

(8) Personal Property: Items permitted will, in general, be in accordance with the department's rule on Personal Property (Inmate) (OAR 291-117). Personal property items may be withheld for security and treatment purposes, as determined by the mental health treatment team.

(9) Visits: An inmate in mental health special housing will be permitted visits in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127).

(10) Recreation: An inmate will have an opportunity to participate in an exercise period in accordance with the inmate's individual treatment plan and the operational needs of the unit.

(11) The management of an inmate placed in therapeutic restraints for medical or mental health treatment shall be in accordance with the rule on Therapeutic Restraints (Use of) (OAR 291-071).

(12) Suicide or Crisis:

(a) An inmate assigned to mental health special housing because of suicidal ideation, or attempt, may be placed on suicide precaution as directed by program or custody manager(s) assigned to the unit.

(b) The inmate will maintain this status until the assigned BHS staff determines that the suicide precaution is no longer necessary, in accordance with the Department of Corrections rule on Suicide Prevention in Correctional Facilities (OAR 291-076).

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

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

Hist.: DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0170 by DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; Renumbered from 291-048-0170 by DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0320

Release From Mental Health Special Housing

(1) Upon inmate petition, an inmate assigned to mental health special housing on a voluntary basis will be reassigned to a less restrictive environment within five working days, unless the mental health treatment team determines continued treatment at the current level of care is necessary. In such instances, the mental health treatment team shall follow the procedures for involuntary assignment outlined in OAR 291-048-0290.

(2) An inmate assigned involuntarily to mental health special housing will remain so assigned for only the shortest length of time necessary to achieve the purpose(s) for which the assignment was prescribed. The assignment shall not exceed 180 days unless the assignment is renewed in a subsequent administrative hearing as outlined in OAR 291-048-0290.

(3) When an inmate is released from mental health special housing, the mental health treatment team, in collaboration with the Office of Population Management, will determine the appropriate housing assignment; e.g., general population, Intensive Management Unit, disciplinary segregation, administrative housing, etc.

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

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

Hist.: DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

291-048-0330

Administrative Hold Assignments

(1) The functional unit manager(s) may temporarily assign an inmate to mental health special housing for other than mental health reasons on administrative hold status if he/she determines that the inmate's assignment is necessary or advisable to protect the safety, security, health, good order and discipline of the facility, its staff, visitors or other inmates, or to further other legitimate correctional objectives.

(2) Assignment to mental health special housing on administrative hold status shall not be an admission to the unit. An inmate assigned to mental health special housing on administrative hold status will be subject to all operational policies and procedures while assigned to the unit.

(3) An inmate may be involuntarily assigned to mental health special housing for a period in excess of 30 days in accordance with the notice and hearings process set forth in the department's rule on Administrative Housing (OAR 291-046).

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

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

Hist.: DOC 2-1999(Temp), f. 1-27-99, cert. ef. 2-1-99 thru 7-30-99; DOC 10-1999, f. & cert. ef. 7-6-99; Renumbered from 291-048-0190 by DOC 18-2010(Temp), f. & cert. ef. 12-13-10 thru 6-11-11; Renumbered from 291-048-0190 by DOC 6-2011, f. 3-31-11, cert. ef. 4-1-11

Rule Caption: Retraction and Restoration of Earned Time Credits for Inmates Needing Residential Alcohol and Drug Treatment (Special Case Factor 25) and Housekeeping Issues.

Adm. Order No.: DOC 7-2011

Filed with Sec. of State: 4-8-2011

Certified to be Effective: 4-8-11

Notice Publication Date: 12-1-2010

Rules Adopted: 291-097-0031

Rules Amended: 291-097-0010, 291-097-0020, 291-097-0025, 291-097-0040, 291-097-0050

Rules Repealed: 291-097-0010(T), 291-097-0020(T), 291-097-0025(T), 291-097-0040(T), 291-097-0050(T)

Subject: These rule modifications are necessary to remove the Special Case Factor 25 designation (high criminality/high addiction) which requires an inmate with this designation to complete a residential alcohol and drug program. All earned time credits are retracted if the inmate doesn't complete addiction treatment prior to release. The designation was created to motivate inmates into treatment by creating a higher level of negative consequences for noncompliance with programming. However, recent research shows that mandated treatment with negative consequences for not completing treatment is not effective, especially in a correctional setting. These inmates will still be classified appropriately, but they won't be treated differently than other inmates for noncompliance with programming. Other amendments are necessary for housekeeping issues.

Rules Coordinator: Janet R. Worley — (503) 945-0933

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291-097-0010

Definitions

(1) Certificate or Degree from a Post-Secondary Education Institution: A certificate or degree awarded by a post-secondary education institution as defined in ORS 337.511 for satisfactory completion of a course of study, which has been approved by the State Board of Education.

(2) Earned Time Credits: Sentence reduction credits (days), up to 30 percent of the sentence imposed, that can be earned by an inmate sentenced under sentencing guidelines, pursuant to ORS 421.121, and these rules. The inmate earns the reductions by compliance with his/her Oregon Corrections Plan and institution conduct.

(a) An inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 prior to January 1, 2010, earns the reductions by compliance with his/her Oregon Corrections Plan and institution conduct.

(b) An inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010, earns the reductions by institutional conduct, compliance with his/her Oregon Corrections Plan, and obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010.

(3) Earned Time Release Date: The release date that has been achieved by an inmate, calculated by subtracting the earned time credits accrued from the maximum date.

(4) Extra Good Time Credits: Sentence reduction credits (days) that can be earned by an inmate sentenced for crimes committed prior to November 1, 1989 (pre-sentencing guidelines), for satisfactory work assignment or participation in an educational program, pursuant to ORS 421.120(1)(c), (d) and (e) and 421.122, and these rules. Days earned reduce the statutory good time date. Methods of computation are delineated in OAR 291-097-0070.

(5) Final Review Period: An increment of at least four months prior to an inmate's projected release date.

(6) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(7) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, or an Assistant Director and has responsibility for the delivery of program services or coordination of program operations.

(8) Judgment: Document issued by the court that commits an inmate to the legal and physical custody of the Department of Corrections, and reflects the inmate's term of incarceration, term of post-prison supervision, and court-ordered supervision conditions, if any.

(9) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(10) Offender: Any person under the supervision of the Department of Corrections, local supervisory authority or community corrections who is on probation, parole or post-prison supervision status.

(11) Offender Information & Sentence Computation Unit (OISC): The functional unit charged to administrate applicable statutes pertaining to sentencing; develop, implement and revise applicable processes for inmate and offender sentence computation; respond to public information requests with regard to inmates and offenders; certify an inmate's release date; and provide supportive services to Department facilities with regard to inmate sentencing.

(12) Oregon Corrections Plan (OCP): An automated case management tool incorporated into the Corrections Information System that serves as the primary tool for tracking an inmate's progress in working to mitigate the identified risk factors.

(13) Parole Release Date: The date on which an inmate is ordered to be released from an indeterminate prison sentence(s) to parole by the Board of Parole and Post-Prison Supervision. Parole release may be to the community, detainer or to another Department of Corrections sentence.

(14) Post-Secondary Education Institution: An education institution as defined in ORS 337.511.

(15) Pre-Sentence: That period of time a defendant spends in physical custody or incarceration from the point of arrest to the date of delivery to the Department to serve that sentence.

(16) Prison Term:

(a) Sentencing Guidelines Sentences: The length of incarceration time within a Department of Corrections facility as established by the court in the judgment for each crime of conviction.

(b) Pre-Sentencing Guidelines Sentences: The length of required incarceration time within a Department of Corrections facility as established by the order of the Board of Parole and Post-Prison Supervision setting of a parole release date.

(17) Prison Term Analyst: The staff person from OISC responsible for calculating inmates' sentences, applying sentence reduction credits and establishing release dates pursuant to applicable rules and statutes.

(18) Projected Release Date: The date upon which an inmate is anticipated to complete service of the prison term.

(19) Restoration of Earned Time, Statutory Good Time, Extra Good Time Credits: Where previously retracted earned time, statutory good time, extra good time and previously forfeited statutory good time and extra good time for parole violators are granted and applied back to the inmate's sentence.

(20) Retraction: Where previously granted earned time, statutory good time or extra good time credits are forfeited by an inmate as a result of a significant negative action on the part of the inmate, in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105), or forfeiture of program earned time credits, advanced at the beginning of the final review period, for failure to comply with the OCP during the final review period.

(21) Review Period: A six-month increment, beginning with an inmate's admission date, used to determine an inmate's compliance with institution behavior and his/her OCP.

(22) Short-Term Transitional /Non-Prison Leave: A leave for a period not to exceed 90 days preceding an established release date that allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community. Short-term transitional leave/non-prison leave is granted in accordance with ORS 421.510 and the Department's rule on Short-Term Transitional Leave, Emergency Leaves, and Supervised Trips (OAR 291-063).

(23) Statutory Good Time Credits: Prison term reduction credits (days) applicable to sentences for crimes committed prior to November 1, 1989 (matrix sentences) consisting of a reduction of one day for every two days served, pursuant to ORS 421.120(1)(a) and (b), and these rules. The application of statutory good time days establishes the initial statutory good time date and is re-calculated upon parole revocation based on the length of the remaining sentence.

(24) Supplemental Judgment: The form of judgment prepared by and transmitted to a sentencing court pursuant to Oregon Laws 2009, Chapter 660, §18 (House Bill 3508) which authorizes the Department to consider the inmate for a reduction in the term of incarceration under ORS 421.121 that may not exceed 30 percent of the total term of incarceration in a DOC facility.

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

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

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2000, f. & cert. ef. 6-26-00; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11

291-097-0020

Calculation and Application of Earned Time Credits

(1) For inmates sentenced on or after November 1, 1989, the maximum amount of earned time credits is 20 percent of the total sentencing guidelines sentence.

(a) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: 10 percent for compliance with the Oregon Corrections Plan and 10 percent for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

(b) Pursuant to Oregon Laws 2009, chapter 623 and section (4) of this rule, consideration for earned time credit may also be given for an inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from

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a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010.

(2) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, the maximum amount of earned time credits is 30 percent of the total sentencing guidelines sentence.

(a) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: 15 percent for compliance with the Oregon Corrections Plan and 15 percent for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

(b) Pursuant to Oregon Laws 2009, chapter 623 and section (4) of this rule, consideration for earned time credit may also be given for an inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010.

(3) Earned Time Review Periods:

(a) Oregon Corrections Plan compliance is defined as acceptable participation in work and self-improvement programs required within the OCP. The required activities within the OCP are determined by ongoing assessment and evaluation, which begins at the inception of the inmate prison term.

(A) An inmate will be considered to be compliant if he/she was not failed from the required program activity(ies) during the review period under consideration, nor did the inmate refuse to participate in required programming during the review period under consideration.

(B) As needed, the counselor will communicate with the treatment or program providers as well as work crew supervisors to evaluate an inmate's compliance with the required program activity(ies).

(C) If the inmate's counselor determines the inmate is non-compliant with the OCP, he/she will approve a program failure for documentation in the inmate's computer record.

(b) Institution conduct compliance is defined as maintaining Level I or Level II major misconduct-free behavior during the review period. Major misconduct is documented in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). Any finding of a Level I or Level II major misconduct violation during the review period will be considered as noncompliance. The date of the adjudication, not of the incident, will be used for the date of the violation.

(c) At the end of each review period, the prison term analyst will review the inmate's computer records for information reflecting the inmate's compliance with the current Oregon Corrections Plan and institution conduct. Based on the information contained in the inmate's computer records, the prison term analyst will apply either:

(A) An effective 0, 10, or 20 percent reduction to the sentencing guidelines sentence proportional for the review period under consideration for inmates sentenced on or after November 1, 1989, or

(B) An effective 0, 15, or 30 percent reduction to the sentencing guidelines sentence proportional for the review period under consideration for inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010 or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits.

(d) For inmates housed in non-Oregon Department of Corrections facilities, the designated counselor will review the inmate's institution file including any reports received from the housing facility to determine compliance with the current OCP and institution conduct.

(A) OCP compliance will be determined by the inmate's reported compliance with requirements as determined by Department staff or the housing facility staff.

(B) Due process comparable to the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) shall be applied. Institution conduct non-compliance will be determined by substituting the rule(s) of prohibited conduct, for the rule(s) violated at the housing facility, with the most equivalent charges as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). The functional unit manager or

designee may impose sanctions, in addition to that imposed by the housing facility, related to sentence reductions.

(e) For each review period under consideration for inmates housed in Oregon Department of Corrections facilities, the prison term analyst will list the reasons for applying or not applying earned time credits and record the corresponding percentage of earned time applied to the inmate's sentence on the Earned Time Computation Form (CD 1154D).

(f) For inmates housed in non-Oregon Department of Corrections facilities, the designated counselor will list the reasons for applying or not applying earned time credits and record the corresponding percentage of earned time applied on the Earned Time Computation Form (CD 1154D).

(g) Upon the prison term analyst's or counselor's application of earned time credits toward an inmate's sentence for the review period under consideration, the OISC Unit will recompute the inmate's new earned time release date, file the Earned Time Computation Form (CD 1154D) in the institution file, and provide a copy of the determination to the inmate.

(4) Determination of Earned Time Credits for Education or Apprenticeship Certifications:

(a) Inmates who obtain a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 prior to January 1, 2010 are not eligible to be considered for earned time credits for education or apprenticeship certifications.

(b) Subject to OAR 291-097-0025 (Retraction of Earned Time Credits), 291-097-0030 (Restoration of Earned Time Credits), and 291-097-0040 (Determination of Earned Time Credits During Final Review Period for Sentencing Guidelines Sentences), at the time an inmate obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010, the prison term analyst will apply the amount of earned time credits, not to exceed 60 days, to the amount of earned time credits actually received by the inmate for either maintaining appropriate institution conduct or compliance with his/her Oregon Corrections Plan, in order to bring the inmate's total earned time credits up to the amount of earned time credits the inmate would have received if the inmate maintained appropriate institution conduct and was in full compliance with his/her Oregon Corrections Plan as of the date the inmate obtained the education or apprenticeship certification.

(A) The Department may apply up to 60 days earned time credits for education or apprenticeship certifications toward prior earned time not credited to the sentence due to adjudicated misconduct during the presentence incarceration or while an inmate is incarcerated in an Oregon county jail prior to the inmate's return to a Department of Corrections facility following an escape, revocation of second look conditional release, or violation of non-AIP or AIP short-term transitional leave, or toward non-compliance with institutional conduct or the Oregon Corrections Plan, and toward earned time previously retracted during the service of the sentence.

(B) In no event will an inmate be credited with more earned time credits than the amount of earned time credits the inmate would have received toward the sentence if the inmate maintained appropriate institutional behavior and was in full compliance with his/her Oregon Corrections Plan as of the date the inmate obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

(C) The earned time credits for education or apprenticeship certifications may not be applied to a sentence whose prison term reached its earned time release date prior to the date the inmate obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

(D) An inmate may be credited with multiple education or apprenticeship certifications as long as no individual sentence receives more than 60 days total earned time credit for obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

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(E) The date the inmate successfully meets the total score requirements for the GED certificate is the date the inmate is deemed to have obtained his/her GED certificate.

(5) Determination of Earned Time Credits During Presentence Incarceration: For crimes committed on or after November 1, 1989, earned time credits will be computed for the period in which an inmate is in custody in a non-Department of Corrections facility prior to sentencing and admission to the Department of Corrections, based solely on the inmate's conduct in the facility.

(a) Conduct compliance will be assumed, unless the Department receives documentation of adjudicated misconduct from the facility.

(A) For inmates sentenced on or after November 1, 1989, the inmate will be granted an effective 0 or 20 percent reduction toward the sentencing guidelines sentence proportional for the length of presentence incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the inmate will be granted an effective 0 or 30 percent reduction toward the sentencing guidelines sentence proportional for the length of presentence incarceration.

(b) Any verified major misconduct equivalent to a Level I or Level II major misconduct violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during any of the presentence incarceration credits applied to the sentence will result in an effective 0 percent reduction toward the sentencing guidelines sentence proportional for the total length of presentence incarceration. The date of the adjudication, not of the incident, will be used for the date of the violation.

(A) For inmates sentenced on or after November 1, 1989, conduct compliance will result in an effective 20 percent reduction in the sentencing guidelines prison term proportional for the length of presentence incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, conduct compliance will result in an effective 30 percent reduction in the sentencing guidelines prison term proportional for the length of presentence incarceration.

(6) If the inmate escapes, the prison term analyst will close out the current earned time review period, changing the current review period to end the day after escape. An inmate that is returned from an escape to a Department of Corrections facility will have the starting date of the new earned time credit cycle begin with the date of return. The escape will constitute a program failure for the period up to the escape.

(7) Alternative Incarceration Program:

(a) If, during any review period, the inmate is assigned to an Alternative Incarceration Program and for sufficient justification as determined by the functional unit manager's committee to be unsuccessful, the inmate will be considered a program failure as provided by the Department's rule on Alternative Incarceration Programs (OAR 291-062).

(b) If the inmate fails to successfully complete the short-term transitional leave (non-prison leave) granted through the Alternative Incarceration Program, the inmate will be considered a program failure and non-compliant with institution conduct for the length of the inmate's short-term transitional leave. The failure to successfully complete the short-term transitional leave (non-prison leave) will not result in a retraction of the portion of earned time credits for program compliance advanced at the beginning of the final review period as outlined in OAR 291-097-0025(3).

(8) Determination of earned time credits for inmates on non-AIP transitional leave:

(a) Earned time credits will be computed for the period in which an inmate is serving the remainder of his/her sentencing guidelines term of incarceration on short-term transitional leave (OAR 291-063).

(A) Institution conduct and Oregon Corrections Plan compliance will be assumed while an inmate is released on short-term transitional leave.

(B) Earned time credits for the period on transitional leave will be applied at a rate of 20 percent or 30 percent, in accordance with the applicable rate for the sentence at the time of release onto short-term transitional leave.

(b) A revocation of an inmate's short-term transitional leave is deemed non-compliance with the inmate's Oregon Corrections Plan and non-compliance with institution conduct. Upon revocation of short-term

transitional leave, an inmate will receive an effective 0 percent reduction for OCP compliance and 0 percent reduction toward the sentencing guidelines sentence for institutional conduct proportional for the length of the inmate's short-term transitional leave.

(c) The failure to successfully complete the short-term transitional leave will not result in a retraction of the portion of earned time credits for program compliance advanced at the beginning of the final review period as outlined in OAR 291-097-0025(3).

(9) If all of an inmate's sentence(s) is vacated, reversed and remanded for new trial, or conviction affirmed and remanded for resentencing, the prison term analyst will close out the current earned time review period to end the day after release to the sentencing court. An inmate that is returned on a resentence will start a new review period, effective the date of return to a Department of Corrections facility. The new earned time credit cycle date will be reflected on the inmate's facesheet.

(10) Determination of earned time credits for inmates serving the remainder of a sentencing guidelines sentence on conditional release (Second Look):

(a) Earned time credits will be computed for the period in which an inmate is serving the remainder of his/her sentencing guidelines term of incarceration in the community on conditional release, based solely on the inmate's compliance with his/her conditional release plan.

(b) Earned time credits for the period on conditional release (Second Look) will be applied at a rate of 20 percent or 30 percent, in accordance with the applicable rate for the sentence at the time of release onto conditional release (Second Look).

(c) Conduct compliance will be assumed, unless the inmate's conditional release is revoked by the sentencing court.

(d) Any revocation of an inmate's conditional release prior to the inmate reaching his/her projected earned time date will result in an effective 0 percent reduction in the sentencing guidelines prison term for the length of the inmate's sentence being served in the community on conditional release.

(11) If an inmate is incarcerated in an Oregon county jail prior to the inmate's return to a Department of Corrections facility following an escape, revocation of second look conditional release, or violation of non-AIP or AIP short-term transitional leave, earned time credits will be computed for the period in which the inmate is in custody based solely on the inmate's conduct in the county jail.

(a) Conduct compliance will be assumed, unless the Department receives documentation of adjudicated misconduct from the facility.

(A) For inmates sentenced on or after November 1, 1989, the inmate will be granted an effective 0 or 20 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the inmate will be granted an effective 0 or 30 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration.

(b) Any verified major misconduct equivalent to a Level I or Level II major misconduct violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during the incarceration will result in an effective 0 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration. The date of the adjudication, not of the incident, will be used for the date of the violation.

(A) For inmates sentenced on or after November 1, 1989, conduct compliance will result in an effective 20 percent reduction in the sentencing guidelines prison term proportional for the length of incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, conduct compliance will result in an effective 30 percent reduction in the sentencing guidelines prison term proportional for the length of incarceration.

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

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

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2000, f. & cert. ef. 6-26-00; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. &

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cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11

291-097-0025

Retraction of Earned Time Credits

Time credits previously earned or applied will be retracted as follows:

(1) The inmate is found guilty of a major rule violation after a formal disciplinary hearing or upon waiver of the inmate's right to a hearing, and the disciplinary order directs that earned time credits earned or applied be forfeited in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291 105).

(a) A recommendation for retraction of earned time shall be within the range corresponding to the violation level as set forth in Table 1.

(b) A recommendation for retraction of earned time credits may not exceed the amount previously applied, including any amount credited to the inmate for obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010.

(2) Failure to comply with the OCP during the final review period will result in a retraction of the portion of the earned time credits for program compliance advanced at the beginning of the final review period. The prison term analyst will document the retraction on the Earned Time Computation form (CD 1154D).

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

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

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

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11

291-097-0031

Restoration of Earned Time Credits from Special Case Factor 25 Retractions

(1) Special Case Factor 25: Inmates identified as both highly criminal and highly involved with drugs or alcohol through intake screening or subsequent assessment were previously required to participate and complete a residential alcohol and drug program if available prior to the inmate's release or have their program earned time retracted for non-compliance.

(2) For only those inmates currently incarcerated and serving a sentence for a crime committed on or after November 1, 1989, and who were previously identified as needing residential alcohol and drug treatment (SCF 25), OISC shall restore all earned time credits previously retracted for SCF 25 non-compliance. Time credits restored shall not exceed those previously retracted.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11

291-097-0040

Determination of Earned Time Credits During Final Review Period for Sentencing Guideline Sentences

(1) Four months prior to an inmate's projected release date, prison term analysts (or the designated counselor for inmates housed in non-Oregon Department of Corrections facilities) will conduct a final review of inmates' earned time compliance.

(a) Final reviews will be conducted only for inmates serving a sentencing guidelines sentence. Prison term analysts will advance and apply earned time credits for the final review period.

(b) An inmate's full compliance with the OCP and institutional behavior will be assumed during the final review period.

(A) For inmates sentenced on or after November 1, 1989, the prison term analyst will apply an effective 20 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the prison term analyst

will apply an effective 30 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(2) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate's prison term is extended as a result of a new sentence or an adjustment in presentence time, the prison term analyst will delete the final review and any earned time credits advanced for the final review period. The prison term analyst will complete a new Earned Time Computation form (CD 1154D) to assure that the extended prison term is reviewed in accordance with these rules.

(3) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate's prison term is reduced, the OISC Unit will adjust the final review period and any earned time credits advanced for the final review period provided the inmate was in full compliance with his/her Oregon Corrections Plan and institutional behavior at the time of the final review.

(a) If the inmate was in partial compliance with his/her Oregon Corrections Plan or institutional behavior at the time of the final review, the prison term analyst will delete the final review and any earned time credits advanced for the final review period.

(b) The prison term analyst will complete a new Earned Time Computation form (CD 1154D) to assure that the reduced prison term is reviewed in accordance with these rules.

(4) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010, the OISC Unit will adjust the final review period and any earned time credits advanced for the final review period in accordance with OAR 291-097-0020(4).

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

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

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10; DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11

291-097-0050

Administrative Review

(1) An inmate may obtain an independent review of the determination of his/her OCP performance as documented by the prison term analyst or designated counselor (for inmates housed in non-Oregon Department of Corrections facilities) for each review period by writing to the Office of Population Management and requesting an administrative review of the determination.

(a) The review request must be in writing on an Inmate Communication form (CD 214), and must state the reason(s) why the inmate believes the determination is not correct. A copy of the Earned Time Computation form under review must also be submitted.

(b) Requests for administrative review must be received by the Office of Population Management no later than 30 days after final determination as indicated on the Earned Time Computation form.

(2) If an inmate submits a proper and timely request for administrative review the Office of Population Management shall review the determination, and either approve or modify the determination, in writing, within 30 days after receipt of the request. A copy of the order shall be provided to the inmate, his/her assigned counselor, and OISC.

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

Stat Auth: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stat Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 14-2010(Temp), f. & cert. ef. 10-19-10 thru 4-15-11; DOC 7-2011, f. & cert. ef. 4-8-11

Department of Energy Chapter 330

Rule Caption: Clarifies treatment of federal grants received in connection with a facility eligible for a BETC.

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Adm. Order No.: DOE 3-2011(Temp)

Filed with Sec. of State: 4-15-2011

Certified to be Effective: 4-18-11 thru 10-14-11

Notice Publication Date:

Rules Amended: 330-090-0110, 330-090-0130, 330-090-0133, 330-09-0140

Subject: These rules clarify that federal grants received in connection with a facility reduce the BETC certified cost of the facility dollar for dollar, as required by ORS 315.356. The rules also clarify that, for applicable facilities receiving a preliminary certification and that begin construction on or after April 15, 2011, federal grants received under section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA) will reduce the BETC certified cost dollar for dollar. The rules provide new definitions of “certified cost” and “federal grant”, and the rules state that the reduction for federal grants is to the BETC final certified cost.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-090-0110

Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 90, the following definitions apply unless the context requires otherwise:

(1) “Alternative Fuel”: A motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency for roadway use that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, biofuels, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) “Alternative Fuel Fueling Station”: A renewable energy resource facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) “Alternative Fuel Vehicle (AFV)” is a vehicle designed to operate on an alternative fuel and includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. AFV does not include vehicles owned or leased by the State of Oregon acquired to comply with federal requirements for fleet acquisition of alternative fueled vehicles or vehicles leased by an investor-owned utility (IOU) to others. For purposes of qualifying for a BETC, gasoline-hybrid AFVs purchased on or after January 1, 2010 must also be designed for electrical plug-in.

(4) “Applicant”: An applicant means:

(a) A person who applies for a preliminary certification of a BETC under this section includes:

(A) Individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(B) Any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a qualified pass-through partner, or commit to select such a partner prior to final certification. These entities must follow all procurement processes, including competitive bid, where applicable.

(C) A contractor installing an alternative fueled vehicle fueling station in a dwelling.

(b) A person who applies for a final certification of a BETC under this section must be the facility owner listed on the preliminary certification.

(c) The tax credit certificate will be issued to a facility owner or a qualified pass-through partner, but the tax credit may only be claimed pursuant to ORS 315.354.

(d) An applicant for preliminary certification or final certification or a tax credit recipient may not include any business or non-profit corporation or cooperative that restricts membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(5) “Biofuels”: A motor vehicle or thermal combustion fuel other than petroleum gasoline or diesel which includes ethanol or is an ethanol blend at concentrations of 11 percent of the entire volume of the blended fuel or

greater or biodiesel or is a biodiesel blend at concentrations of 20 percent of the entire volume of the blended fuel or greater, including:

(a) Biodiesel which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of American Standards and Testing Measurement (ASTM) D 6751 in effect on December 1, 2007 and is registered with the US EPA as a fuel and a fuel additive under Section 211(b) of the Clean Air Act.

(b) Biodiesel Blends is biodiesel fuel meeting the requirements of ASTM D 6751 in effect on December 1, 2007, blended with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

(c) Ethanol (CH₃CH₂OH) is an alcohol fuel also known as ethyl alcohol, grain alcohol, and EtOH made from starch crops or from cellulosic biomass materials, such as grass, wood, crop residues, or used cellulose materials where component sugars are fermented into ethanol meeting the requirements of ASTM designation D 4806-01a; “Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel” in effect on December 1, 2007.

(d) Ethanol Blends which is ethanol fuel meeting the requirements of ASTM D 4806, “Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel” in effect on December 1, 2007, blended with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend, and

(e) “E85,” a motor vehicle fuel that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains 85 percent ethanol by volume, but at a minimum must contain 75 percent ethanol by volume. For the purposes of this chapter, the energy content of E85 is considered to be eighty-two thousand BTUs per gallon. E85 produced for use as a motor fuel shall comply with ASTM specification D 5798-99 in effect on December 1, 2007.

(6) “Biomass”: An organic matter such as agricultural crops and residue, wood and wood waste, animal waste, aquatic plants and organic components of municipal and industrial wastes comprised of uncontaminated carbohydrates and other cellulosic material, and organic by products from wood pulping and other biologically derived materials including organic fibers that are available on a renewable or naturally recurring basis. This definition excludes cordwood or wood used for burning in fireplaces.

(7) “Building Automation Controls Facility”: Energy facilities that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice and applicable building code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as defined in these rules. Facilities are eligible when energy saving features meet the following requirements and applicable code:

(a) For existing systems within their service life, the following standards apply:

(A) The baseline will be based on the existing system’s capabilities in fully functional and operating condition.

(B) Eligible costs will be based on the incremental cost and energy savings of the proposed system as compared to a fully functioning baseline system (savings and costs associated with maintenance and repair activities are not eligible).

(b) For systems beyond service life or new buildings, the following standards apply:

(A) Eligible costs and energy savings will be based on the incremental cost and energy savings between the proposed system and the baseline system.

(B) Only the components of the project that achieve energy savings will be considered eligible. If the component does not achieve energy savings it will not be considered an eligible cost.

(C) The baseline system must incorporate similar technologies to the proposed system. The minimum standard or baseline system will have the following features, plus any additional features required by code: a start/stop program, night setback program, enthalpy control program (economizer), lighting control program (sweep > 5,000 sq.ft.) and a variable flow (10 hp and above).

(8) “Building Code”: Applicable state and local codes as defined in ORS 455.010 that are in effect the date the Department receives the application for preliminary certification.

(9) “Building Envelope”: That element of a building which encloses conditioned spaces through which thermal energy may be transmitted to or from the exterior or to or from unconditioned spaces.

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(10) "Car Sharing Facility": A facility in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(11) "Certified cost": The cost certified in the final certification issued pursuant to ORS 469.215, subject to reduction by any federal grants received in connection with the facility as required by ORS 315.356.

(12) "Combined Heat and Power (Cogeneration)": Means a facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate calculation demonstrating a heat rate of 6,120 Btu/kWh or less (10 percent better than the 6,800 Btu/kWh current standard generation). This facility may be eligible for a 35 percent BETC. Facilities that do not meet this heat rate requirement may still qualify in part for a credit relating to the heat recovery portion of the project. The equation for the fuel chargeable to power heat rate calculation is $FCP = (FI - FD) / P$, where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility.

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.

(13) "Commercial New Construction Facility": An energy facility which includes a new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(14) "Commercial Process": An energy facility that is an energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(15) "Commuter Parking Space" means a facility that is a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee's use:

(A) Separate from the lease for the business premises.

(B) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

(16) "Completed Application": Contains all of the information required in these rules and payments under OAR 330-090-0150. All questions on the application must be answered. A completed application for final certification must also include a completed, signed pass-through partner(s) agreement form, where the facility owner chooses to transfer the tax credit. Except as provided in OAR 330-090-0133, no application for a final certification in which the facility owner has indicated a choice to transfer the tax credit under ORS 469.206 is considered complete until the Department receives both the completed final certification application form from the facility owner and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to the pass-through partner.

(17) "Completed Facility": A facility for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or, in the case of a Research, Development and Demonstration facility, which the Director determines the applicant has made all reasonable efforts to operate, including making changes required by the Department.

(18) "Component Parts of Electric Vehicles": means component parts for use solely in Electric Vehicles and not in conventional vehicles. Component parts shall be distinguished by their absence from conventional vehicles and shall not include components that can be used interchangeably in both electric and conventional vehicles. For the purpose of this def-

inition, "conventional vehicle" is a production vehicle that is powered with an internal combustion engine, excluding hybrids.

(19) "Cooperative Agreement Organization": The Department may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by the Department based on the qualifications of the organization and subject to conditions specified in the agreement.

(20) "Cost": The actual capital costs and expenses needed to acquire, erect, design, build, modify, or install a facility that is eligible to receive a BETC. Costs that are incurred to bring a facility up to building code standards or otherwise repair the building in order to install the facility are considered necessary features, and may not be eligible. Costs financed with federal funds, subject to specific restrictions, terms and conditions may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the facility, including but not limited to debt fees and equity fees;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150, and shipping;

(C) All materials and supplies needed for the erection, construction, installation or acquisition of the proposed facility; and

(D) Work performed by employees or independent contractors of the applicant based on the following conditions:

(i) Employees or contractors must be certified, accredited, licensed, or otherwise qualified to do the work;

(ii) The work must be associated with the erection, construction, installation or acquisition of the proposed facility or in the case of a research development and demonstration facility, the work shall be directly related to the research, development, demonstration, facility design, monitoring, assessment, evaluation and reporting related to the product or technology;

(iii) Project management and other similar costs may only account for up to 15 percent of the total eligible costs; and

(iv) Costs for employee's or contractor's work on the energy facility must be detailed and documented as to specific tasks, hours worked, and compensation costs. Donated, in-kind or volunteer labor is not eligible.

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related) or directly linked to the research, development or demonstration facility (excluding patents, copyrights, etc.); and

(F) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system) under the American with Disabilities Act.

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Litigation or other operational-related legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a facility;

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for a facility including, but not limited to, the BETC review charge, costs associated with the creation and development of the CPA verification letter and costs associated with securing a pass-through partner for the facility;

(F) Routine operational or maintenance costs associated with the facility, other than a transportation services facility, including services, supplies and labor;

(G) Expenses related to training, education or other related expenses;

(H) Expenses that are directly or indirectly offset with federal fee waivers; or

(I) Other costs the Director excludes.

(c) If a facility is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the facility is the value paid for the facility. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the facility is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If a facility serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. The Department may do inspections to verify eligible costs.

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(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar facility without energy efficient features. Cost may be limited to incremental cost for conservation applications for new facilities or for the replacement of facilities beyond their service life, including when a code, standard or other base system is required.

(A) In commercial new construction, it is the difference between building to code, or standard practice if this exceeds code, and building to meet or exceed the standards for substantial energy savings.

(B) In other facilities, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Eligible facility costs are limited by the following:

(A) Facilities must have a more than one to 15-year simple payback period unless otherwise specified in these rules. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) Facilities must have a simple payback of more than one year and less than the service life of the facility.

(C) Rental dwelling weatherization facilities are limited to a 30-year simple payback.

(D) Solar photovoltaic (PV) facilities are limited by the maximum eligible facility cost ratio (MEC), expressed in terms of \$/watt. PV facility eligible cost shall be calculated by multiplying the appropriate rate provided below by the facility size. Once a facility has received preliminary certification the calculated cost shall be effective for 36 months for facilities to be owned by the public and 12 months for all other facilities, from the date of certification. If the Department has not received a complete application for final certification within this time, the cost shall be recalculated based on the rate in effect at that time the final application is submitted. The minimum module performance certified by the manufacturer shall be used to calculate eligible cost. The MEC for a facility rated to produce:

(i) Up to and including 30 kW is \$7.50/watt.

(ii) More than 30 kW, but less than 200 kW, is $-0.01 \times (\text{system size in kW}) + 7.8$.

(iii) 200 kW or more is \$5.80/watt.

(E) Costs for a facility, or portion thereof, that has previously received a BETC.

(F) Costs to replace the same baseline facility more than once.

(i) The Department may require the baseline facility to be specifically identified and/or permanently decommissioned.

(G) For solar thermal (ST) systems,

(i) The maximum eligible cost (MEC), not including pool heating facilities, shall be calculated using the following formula: $\text{MEC} = \text{SOC} \times \text{Number of modules} \times \text{Solar Thermal Rate}$. Standard Oregon Conditions (SOC) is based on the OG-100 collector performance data published by the Solar Rating and Certification Corporation (SRCC) on the date the preliminary application is issued. SOC is calculated using a weighted average of the values in the "Mildly Cloudy" (1500Btu/ft²-day) test data using the following equation: $\text{SOC} = 0.1(\text{Category A}) + 0.2(\text{Category B}) + 0.3(\text{Category C}) + 0.4(\text{Category D})$.

(ii) The system size is defined as the SOC multiplied by the number of collectors in the system. The following thermal rates are divided into three tiers based on the system size:

(I) For a system size of less than 100KBtu/day, the rate is \$220/KBtu/day

(II) For a system size that is 100 KBtu/day or greater, but less than 250 KBtu/day, the rate is \$210/KBtu/day

(III) For a system size greater than 250 KBtu/day, the rate is \$200/KBtu/day.

(H) Sustainable building practices facilities, recycling market development, high performance homes, homebuilder installed renewable energy facilities and transportation facilities, excluding efficient truck technology, are exempt from simple payback requirements.

(I) For renewable energy facility installations, the following are ineligible costs: roofing, re-roofing and engineering for roofing on renewable facilities.

(g) Costs for space conditioning or individual metering of a facility(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be limited to the total eligible facility costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(h) Eligible costs for transportation facilities include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, vanpool, individualized behavior change program, Research,

Development and Demonstration (RD&D), purchasing or otherwise obtaining alternative fuel vehicles that are designed to transport five or more passengers, transportation services and transportation services for K-12 students. Except for RD&D facilities, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation facilities is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the facility.

(i) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. The Department may determine the incremental cost as a portion of the facility cost based on similar facilities up to forty percent of the purchase cost.

(j) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by the Department prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to the Department, however, payments required by OAR 330-090-0150(3) do apply.

(k) Sustainable building practices facilities are exempt from the previous requirements of this definition, as the eligible cost for these facilities is calculated using data established in **Table 1**. [ED. NOTE: Table reference is available from the agency.]

(L) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization or federal grants or credits and the BETC may not exceed certified costs.

(21) "Cost-per-Vehicle Mile": The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Department's website.

(22) "Director": The Director of the Oregon Department of Energy or designees.

(23) "Energy Department": The Department of Energy.

(24) "Energy Facility": is defined in ORS 469.185 (5).

(25) "Facility": is defined in ORS 469.185 (6) and also includes a Research, Development & Demonstration (RD&D) facility that complies with these rules. A facility must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such facility, except as allowed for a Research Development & Demonstration facility, transportation or recycling market development.

(a) An energy conservation measure (ECM), is a facility if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Costs for a facility needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(c) A space conditioning system(s) is a facility if it provides substantial energy savings and complies with the following BETC program requirements:

(A) A report demonstrating any mercury-switch thermostats that is replaced or have been recycled and, if so, how.

(B) Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in these rules, of a fuel switching facility will be allowed if the upgrade complies with these rules.

(d) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR chapter 330, division 130 and associated guidelines, in addition to meeting requirements of these rules.

(e) For a solar photovoltaic facility to be eligible to receive a BETC, all qualifying installations must meet the following minimum facility specifications:

(A) Facility must be permitted and in compliance with all applicable building and electrical codes.

(B) All facility equipment must be rated for the temperature and exposure conditions in which it will operate.

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(C) All facility components must be new (modules, inverter, batteries, mounting hardware).

(D) Array mounting must not reduce the expected life or durability of the structure on which it is located.

(E) The facility must include all building code required signage and a customer manual.

(F) A customer manual must contain the following information:

(i) Facility documentation, including:

(I) As-built drawings that accurately describe the components installed and the wiring design, including wire sizes, and estimated length of wire runs.

(II) Facility site plan that indicates array and inverter location.

(III) Sunchart used to determine facility total solar resource fraction.

(IV) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.

(ii) Warranties and installation documentation

(I) Minimum two-year contractor warranty for materials and workmanship

(II) Manufacturer's warranty for PV modules and inverter

(III) Permit documentation

(iii) Manuals and data sheets

(I) Bill of material listing all primary facility components including part numbers

(II) Inverter owner's manual

(III) Manufacturer data sheets for major components, including but not limited to: inverters, modules, racking/mounting facility, charge controller and batteries.

(G) All facilities must include one or more meters that are capable of recording the facility's total energy production. Meters must be equivalent to American National Standards Institute (ANSI) certified revenue meters with a 0.5 or better accuracy class and, if digital, it must have non-volatile data memory.

(H) Array must be sized to operate within the current, voltage and power limits approved and warranted by the inverter manufacturer. The temperature-adjusted voltage must remain within the inverter limits at the historical record low temperature for the location in which it is installed.

(I) Wires must be sized to keep the total voltage drop below 2 percent on the DC conductors from the array to the inverter including the existing wire whips on the PV modules, and/or 2 percent on the AC conductors from the inverter to the point of interconnection (total not to exceed 4 percent).

(J) The installing contractor must provide a minimum 24-month full warranty on parts and labor to the facility owner.

(K) The solar array must be used exclusively for business purposes. The applicant must supply a recent utility billing statement and a power purchase or net metering agreement, with a local utility in the name of the business. If the system is being placed on a rental dwelling, a signed rental agreement must be provided and the property must remain a rental property for at least five years. Arrays erected at a location that includes a residence that is not a rental dwelling, must be separately metered from the residence to qualify for a BETC.

(L) Facilities participating in the pilot Feed-In Tariff program under ORS 757.365 are not eligible to receive a BETC.

(f) For a solar thermal facility to be eligible to receive a BETC, all qualifying installations must meet the following minimum facility specifications:

(A) The facility must be permitted and in compliance with all applicable building, electrical, and plumbing codes.

(B) All equipment must be rated for the temperature and exposure conditions in which it will operate.

(C) All primary facility components must be new (collectors, tanks, controls, pumps).

(D) Array mounting must not reduce the expected life or durability of the structure on which it is located.

(E) The facility must include a customer manual containing the following information:

(i) Facility documentation, including:

(I) As-built drawings that accurately describe the components installed, including a valve chart.

(II) Facility site plan that indicates the location of collectors and storage tank.

(III) Sunchart used to determine facility total solar resource fraction.

(IV) Operation and maintenance requirements including the name and phone number of person(s) or company to call in the case of a facility failure.

(V) Permit documentation.

(ii) Warranties and installation documentation, including:

(I) A minimum two-year contractor warranty for materials and workmanship

(II) Manufacturer's warranty for collector, tanks, pumps and heat exchanger (if present) and any other components under warranty by the manufacturer.

(III) Permit documentation.

(iii) Manuals and data sheets, including:

(I) Bill of material listing all primary facility components, including part numbers

(II) Facility controller owner's manual

(III) Manufacturer data sheets for major components, including, but not limited to: collectors, tank, controllers, pumps, Btu meter, expansion tank, etc.

(F) Facility is sized appropriately for the load. The solar savings fraction is not to exceed 0.70 for domestic water heating systems without a means of rejecting heat once the load is met.

(G) Thermal storage is adequate to accommodate daily use pattern. For typical domestic load profiles, this is defined as a minimum of 1.25 gallons per square foot of collector area. For facilities with loads that are coincident with solar generate this storage amount may be reduced if documentation is provided.

(H) All solar storage tanks must be insulated with not less than R15 insulation.

(I) The following standards are for pipe insulation:

(i) Collector loop insulation must be rated for conditions in which it operates. Pipe insulation shall have a maximum K value of 0.25 Btu in/hr. sq. ft. F° and a minimum thickness of 0.75 inches.

(ii) Potable water pipe located outdoors must be insulated to a minimum R-value of 12. Pipe insulation must be protected with a U-V rated tape or pipe jacket. U-V paint is not sufficiently durable.

(J) Anti-convective pipe loop or trap is required on the inlet and outlet of the storage tank. These loops or traps shall have a minimum 8-inch vertical drop to constitute an effective convective heat barrier. Heat trap nipples alone are not reliable in stopping heat migration, and will not meet this requirement.

(K) Install thermometers on collector supply and return pipes. One movable thermometer for two wells is sufficient.

(L) Install a BTU meter capable of measuring total delivered energy on all facilities with standard Oregon conditions rating greater than 250 KBtu/day. A Btu meter must have a designated flow meter and temperature sensors and be located on the load side of the system.

(M) Install a properly sized thermostatic mixing valve on the output of the domestic hot water system to ensure that delivered temperature does not exceed 140°F.

(N) Solar thermal facilities must be installed in compliance with the Oregon Mechanical Specialty Code (Chapter 14 OMSC), the Oregon Residential Specialty Code (Chapter 23), the Oregon Plumbing Specialty Code and all other local regulations with jurisdiction.

(O) Facilities must be designed and installed for complete automatic operation including protection from freeze damage and overheating of collectors.

(P) Pressurized storage tanks must not be allowed to be heated above 180°F.

(g) A facility does not include:

(A) A residential structure or dwelling that is being used for a residence, except for residential structures that are used exclusively as a rental dwelling or that qualify as a licensed homebuilder installed renewable energy facility or high performance home facility.

(B) A renewable energy system or device, other than a homebuilder installed renewable energy facility or high performance home facility, that is placed on or at a residence, except for those used exclusively as a rental dwelling, for the purpose of supplying energy to the residence.

(C) Swimming pools and hot tubs used to store heat.

(D) Wood stoves.

(E) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC rules.

(F) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(G) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(H) Devices or materials which are standard practice.

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(I) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(J) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and (B), which were issued an occupancy permit on or after January 1, 1996.

(K) Other items the Director finds are not allowed under ORS 469.185 to 469.225.

(26) "Facility Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Practices Facility, facility eligible square footage includes all temperature-conditioned floor areas, and one level of parking structures or parking structure elements of the facility. It does not include exterior square footage beneath overhangs, awnings, canopies; walkways or unconditioned plaza areas beneath conditioned portions of the building.

(27) "Facility Operator": The person or people to whom the applicant gives authority to manage a facility. Such person or people will be the applicant's agent for all reasons related to the facility once its development begins.

(28) "Facility Owner": An applicant who purchases and owns a qualified facility.

(29) "Facility Start" prior to erection, construction, installation or acquisition: The earliest date on or after the date of the application that meets one of the following criteria:

- (a) A non-refundable deposit will be placed on the facility equipment;
- (b) A purchase order will be placed for the equipment;
- (c) A contract for the design of the facility will be executed;
- (d) A document that obligates the applicant to proceed with a facility will be executed; or

(e) Any other type of financial commitment towards the erection, construction, installation or acquisition of the facility; or

(f) For a Sustainable Building Practices Facility, the eligible cost date is within 30 days of receiving the LEED registration number, before 50 percent of Design Document for the facility are complete, or prior to receiving building permits for the facility; or

(g) For a renewable energy facility, the applicant shall not be considered to have started erection, construction, installation or acquisition of a proposed facility until excavation or actual physical construction of the renewable energy facility has begun. Eligible costs include all costs as defined in these rules, including costs incurred prior to the receipt by the department of the preliminary certification application related to site and facility development and approval. Applicants who start a facility prior to issuance of preliminary certification shall not be eligible to reapply.

(30) "Federal Grant": Any grant received from the federal government in connection with a facility. For facilities that receive a preliminary certification on or after April 18, 2011 and that begin erection, construction, installation or acquisition on or after that date, "federal grant" includes grants authorized under §1603 of the American Recovery and Reinvestment Act of 2009 (ARRA).

(31) "Final Certification": Final certificate issued after completion of an approved BETC facility.

(32) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or

(b) Steam and gases, hot water and brine caused by injecting substances into the earth; or

(c) Heat or other related energy in the earth; or

(d) By-products of (a) through (c).

(33) "Ground Source Heat Pump": means a heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop alternative energy device that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth. A ground source heat pump is eligible for a 35 percent BETC.

(34) "High Efficiency Combined Heat and Power" (Cogeneration): means a renewable energy resource facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate yielding annual average energy savings of 20 percent is eligible for a 50 percent BETC. The fuel chargeable-to-heat rate calculations shall demonstrate a heat rate of 5,440 Btu/kWh or less (20 percent better than the 6,800 Btu/kWh current standard generation). Facilities that do not meet this requirement may still qualify for a 35 percent tax credit (see Combined Heat and Power) or in part for a tax credit relating to the heat recovery por-

tion of the project. The equation for the fuel chargeable to power heat rate calculation is $FCP = (FI - FD) / P$, where:

(a) FCP = Fuel chargeable to power heat rate.

(b) FI = Annual fuel input applicable to the co-generation process in Btu (higher heating value).

(c) FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a co-generation facility

(d) P = Annual net electric output of the co-generation facility in kilowatt-hours.

(35) "High Performance Home": Meets the criteria in ORS 469.185(8) and 469.197 and is a home that is a dwelling unit constructed by a licensed builder under the Oregon Residential Specialty Code with its own space conditioning and water heating facilities and intended for sale to an end-use homebuyer. The facility must meet the following requirements:

(a) Shall be certified through the ENERGY STAR® Homes Northwest program.

(b) Designed and constructed to reduce net purchased energy through use of both energy efficiency and on-site renewable energy resources;

(c) Meet the criteria established for a high-performance home under ORS 469.197

(d) The building shell shall be constructed to at least the minimum values specified in the following prescriptive path:

(A) Ceilings: $U \leq 0.030$

(B) Walls: above grade $U \leq 0.050$

(C) Walls: below grade $U \leq 0.060$

(D) Floors: above grade $U \leq 0.025$

(E) Floors: on grade, [slab edge] perimeter R-15 min. 2 feet vertical or combined vertical/horizontal – heated slab also requires R-10 foam board under slab.

(F) Windows and glass doors: $U \leq 0.32$ (weighted average). Exception: solar glazing that is part of a passive solar design may have a higher U-factor. Glass doors are doors that contain 50 percent or more glazing.

(G) Glazing area: glazing to floor area ratio ≤ 16 percent (including windows, skylights, and glass doors considered as glazing in the code) for homes larger than 1,500 square feet of conditioned space floor area and < 18 percent for homes 1,500 square feet of conditioned space floor area and smaller.

(H) Shell tightness: 5.0 ACH50 Pa confirmed by blower door test

(e) HVAC system and air ducts shall be incorporated into conditioned space, or eliminate forced-air ductwork.

(f) Space conditioning equipment shall meet one of the following requirements:

(i) Two-stage gas or propane furnace, minimum AFUE 0.92

(ii) Gas or propane boiler, minimum AFUE 0.88

(iii) Central AC SEER ≥ 14 (if installed)

(iv) Ducted heat pump \geq HSPF 8.5, air source, and ground source COP ≥ 3.0

(v) Ductless mini-split heat pump with inverter drive, no incorporated electric backup heat, sized and installed as per ENERGY STAR® Homes Northwest specifications in effect at the time the preliminary application is issued.

(g) A Renewable Energy Facility shall provide on-site energy savings or generation of not less than 1kWh/yr per square foot of conditioned floor space.

(h) Water heating systems shall meet ENERGY STAR® Homes Northwest specifications including secondary water heating equipment that backs up solar domestic water heating facilities.

(i) Includes at least one of the following measures:

(A) Obtain certification through a Green Building program recognized by the Department.

(B) Meet ENERGY STAR Homes Northwest Builder Option Package #2 ventilation specifications through the use of a heat or energy recovery ventilator, except that the sensible recovery efficiency shall be > 50 percent at 32°F and the EUV shall be <1.5 Watts/cfm.

(C) Use a gas or propane water heater with a minimum EF of 0.80 for primary water heating. The water heater may not also be used for space heating or as the backup to a solar water heating facility to be considered a qualifying measure under this section.

(j) A High performance home may meet a package of alternate shell or HVAC measures that are equivalent to these requirements. Shell measures may be increased to offset HVAC efficiency, however HVAC measures may not be used to reduce minimum shell requirements.

(a) Shell measures shall be a combination of assemblies that together have a total $U \times A$ no higher than a base case home described in section

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(C)(c), above. Trade-offs will be evaluated according to the thermal trade-off procedure in Oregon Residential Specialty Code Chapter 11, Energy Efficiency, Table N1104.1(1).

(b) Mechanical facilities will be evaluated for comparable annual energy use.

(k) Shall be a detached single-family dwelling unit or a single-family dwelling unit constructed in a group of two or more attached units in which each unit extends from foundation to roof and with open space on at least two sides.

(36) "Homebuilder Installed Renewable Energy Facility" is defined in ORS 469.185(9). The amount of the tax credit for homebuilder-installed renewable energy facilities shall be capped at \$9,000 per high performance home. For purposes of this section, renewable energy resource facilities may include: photovoltaic, solar domestic water heating, active solar space heating, passive solar, and ground source heat pumps. The following requirements must be met:

(a) Photovoltaic: The credit amount is based on \$3 per watt of installed capacity as determined by the Department. Eligible installations have a Total Solar Resource Fraction of at least 75 percent using the Total Solar Resource Fraction (TSRF) method as described in the BETC application. Installations must be verified by a Tax Credit Certified Solar PV Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor for two years.

(b) Solar domestic water heating: The credit amount is equal to \$0.60 per kWh saved annually. The savings are based on values published by the Solar Rating and Certification Corporation (SRCC) plus 100 kWh, which are added to represent Oregon water heating loads. Solar thermal domestic water heating installations must have a Total Solar Resource Fraction (TSRF) of at least 75 percent and be designed to provide no less than 25 percent but not more than 70 percent of the annual domestic water heating load. Installations must be OG-300 certified. Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.

(c) Active solar space heating: The credit amount is equal to \$0.60 per kWh saved based on a calculation procedure approved by Department staff. Active solar space heating installations must demonstrate a whole building annual energy savings of at least 15 percent to be eligible. Installations that combine space heating and domestic water heating are allowed providing that the solar storage tank is not heated by a backup heat source (e.g. gas or electric water heater). Installations must be verified by a solar thermal Tax Credit Certified Technician. This verification must cover performance, longevity, and proper documentation of the facility design, operation and maintenance. Installers must provide a warranty covering all parts and labor of the facility for two years.

(d) Passive solar: The credit amount is equal to \$600 per home plus \$0.60 per square foot of heated floor space. Passive solar design strategies must demonstrate a whole building annual energy savings of at least 20 percent to be eligible. This can be achieved by either meeting the prescriptive requirements for a passive solar home under the Residential Energy Tax Credit or demonstrated with whole building energy modeling and certified by a professional engineer.

(e) Ground source heat pumps: Ground source heat pumps must have a coefficient of performance (COP) of 3.5 or greater. The savings is based on the incremental savings over the energy savings provided by the ground source heat pump with a COP of 3.0. The credit amount is equal to \$0.60 per kWh saved.

(f) Other: Other renewable energy resource facilities (e.g. wind turbines, fuel cells) will be evaluated on a case-by-case basis and the credit amount will be equal to \$0.60 per kWh saved. Facilities must be connected to home's main service panel and installers must provide a warranty covering all parts and labor of the facility for two years.

(37) "HVAC Equipment": Heating, Ventilation, and Air Conditioning (HVAC) systems are eligible for a 35 percent BETC.

(a) Eligible combustion equipment (furnaces, boilers, water heaters, and burners) must have a minimum combustion efficiency of 86 percent Annual Fuel Use Efficiency (AFUE) rating. An exception may be granted if the system efficiency is proven to be higher due to application of a different distribution system (e.g.: radiant systems in high infiltration spaces), control strategies (e.g.: pony boilers), or reduced stand-by losses (e.g.: low-mass boilers).

(b) Heat pumps must have an energy input that is entirely electric and be rated with a Heating Season Performance Factor (HSPF) or Coefficient of Performance (COP) as follows or higher:

(A) Air source heat pumps: 8.5 HSPF

(B) Water source heat pumps: ten percent greater than COP listed in Oregon Energy Efficiency Specialty Code Chapter 5, Table 503.2.3(2)

(C) Air Conditioning: ten percent greater than COP listed in Oregon Energy Efficiency Specialty Code Chapter 5, Table 503.2.3(1)

(38) "Hybrid Electric Vehicle": An energy facility that is a vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A vehicle purchased after January 1, 2010 is not eligible to receive a BETC.

(39) "Individualized Travel Behavior Change Program": A facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.

(40) "Lease Contract": A contract between a lessor and a lessee of a facility.

(a) In a lease-purchase contract the lessee owns the facility at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the facility through the life of the contract and is eligible for the BETC.

(41) "Lighting Facility": An energy facility that will reduce the affected lighting energy use by at least 25 percent or by at least 10 percent for a new facility. For non-residential structures, an eligible facility must also report whether there will be any lamps in the facility that will be subsequently replaced and if those lamps will be recycled, how.

(42) "Low Interest Loan":

(a) For an electric utility, a loan with interest that is not more than 6.5 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(43) "Mass Transit District": A mass transit district included in ORS 184.675(7).

(44) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).

(45) "Necessary Feature": A necessary feature does not qualify as an eligible cost and is a feature for which the primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes facilities to comply with the Building Code;

(b) Complying with specific state or federal statutes or requirements for pollution control or recycling facility equipment. Recycling facilities are necessary features except as noted under the definition of "Recycling Facility" in ORS 469.185(11); or

(c) Routine maintenance or repair, such as replacing water damaged insulation, a broken window, dry-rotted wood siding or trim.

(46) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140. This is also referred to as the "pass-through rate."

(47) "Organization": A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(48) "Pass-through Option": An option that allows a facility owner to transfer the facility's tax credit eligibility to certain persons or businesses in return for a cash payment equivalent to the net present value. A tax credit may be transferred one time only, from the facility owner to an eligible pass-through partner or partners.

(49) "Pass-through Partner": A personal income tax payer, individual, C corporation or S corporation that is transferred a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

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(50) "Preliminary Certification": Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(51) "Premium Efficient Appliance": An energy facility that is an appliance that has been certified by the Department to have premium energy efficiency characteristics. Residential appliances are listed in the Department's Alternative Energy Devices Systems Directory. Commercial appliances are listed in the Department's Premium Efficient Commercial Appliances Directory.

(52) "Public Purpose Organization": The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(53) "Qualified Transit Pass Contract": is defined in ORS 469.185(10).

(54) "Recycling": A process to change a waste stream into a useable product or material. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream or components thereof, although these processes may be a part of an "Energy Facility" or "Waste to Energy Facility" where they include characteristics required to meet those definitions.

(55) "Recycling Facility": is defined in ORS 469.185(11)

(56) "Recycling Market Development Facility": Facilities that stimulate demand for recycled materials. It includes facilities that meet one of the following criteria:

(a) The facility uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(57) "Renewable Diesel": A diesel fuel derived from biomass as defined in United States Energy Policy Act 2005 Section 45K (C)(3), using the process of thermal depolymerization that meets the following:

(a) Registration requirements for fuels and chemicals established by the EPA under Section 211 of the Clean Air Act (42 U.S.C. 7454) in effect on December 1, 2007, and

(b) Requirements of the ASTM D975 or D396 in effect on December 1, 2007, and

(c) Has a producer's Certificate of Analysis which certifies that the lot, batch or produced volume for sale has an organic content concentration of greater than 50 percent of the entire volume of the resultant fuel and the organic feedstock material is described.

(58) "Renewable Energy Resource": is defined in ORS 469.185(12).

(59) "Renewable Energy Resource Facility": means an energy facility used in the processing utilization, or storage of renewable energy resources to:

(a) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(b) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(c) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;

(d) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or

(e) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

(60) "Renewable Energy Resource Equipment Manufacturing Facility": means a facility as defined in ORS 469.185 (13) and subject to standards adopted by the Oregon Department of Energy in these rules.

(61) "Renewable Energy Storage Device": A facility that enables the storage of energy derived from Renewable Energy Resources as defined in ORS 469.185(12). To qualify as a renewable energy storage device a facility does not need to be directly connected to a renewable energy resource, but a beneficial relationship must be demonstrated between the energy output of the resource or resources and the charge and discharge capabilities of the facility. A Renewable Energy Storage Device includes, but is not limited to, batteries or similar devices used to provide propulsive energy in electric vehicles. The storage device may be designed to store energy for transmission lines provided that the transmission lines serve, at least in part, renewable energy resources.

(62) "Rental Dwelling": means any property that meets the requirements of the state building codes and contains a dwelling unit or rooming

unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner and which compensation is subject to Oregon income or excise tax.

(63) "Rental Weatherization": means energy conservation and efficiency measures that improve the energy efficiency of a rental dwelling. In order to qualify for a BETC, an applicant must meet requirements (a) through (c):

(a) An applicant must be planning to perform a minimum of two weatherization measures on the rental dwelling if one of the measures is to replace windows on the rental dwelling. Eligible second measures include one of the following:

(A) Adding floor insulation to R-21,

(B) Attic/ceiling/roof insulation to R-38 or cavity fill,

(C) Wall insulation to R-13 or cavity fill,

(D) Replacing exterior doors to R-5,

(E) Duct sealing and testing by a contractor certified by the Residential Energy Tax Credit program, or

(F) An applicant can demonstrate that the measures (A) through (E) above have already been completed by providing an energy audit from the Energy Trust of Oregon or the applicant's utility, if unavailable the Department may approve another type of energy audit.

(b) Prior to being eligible to receive a BETC for installing a renewable facility on a rental dwelling, all standard weatherization measures, including roof insulation to a minimum of R-38, floor to minimum of R-21 and walls to a minimum of R-13 (where achievable on outside walls where no insulation is present) must be completed. An applicant shall provide appropriate documentation, such as an energy audit as described above in section (a)(F), to verify standard weatherization measures.

(c) For purposes of meeting the requirements of ORS 469.207, when a utility audit is not available, a vendor-provided audit demonstrating substantial savings and approved by the Department will suffice. A self-audit based upon the following list may be substituted when accompanied by U-values, areas, and other appropriate general information regarding the measures, including:

(A) Caulking, weather-stripping and other prescriptive actions to seal the heated space and ducts in a dwelling;

(B) Insulation of ceilings or attics to R-38 if achievable in areas with R-19 or less, including insulation installed on flat roofs and associated ventilation;

(C) Insulation of outside walls to a nominal R-13 if achievable in areas where no insulation is present, of unfinished walls adjacent to unheated areas to R-21 if achievable in areas where no insulation is present, and of finished walls adjacent to unheated areas to R-11 if achievable in areas where no insulation is present;

(D) Insulation of floors over unheated spaces to at least R-25 if achievable in areas where no insulation is present, and materials to support the insulation and needed ground cover and ventilation;

(E) Insulation and sealing of supply and return air ducts in unheated spaces to at least R-8 if achievable and no insulation is present and the ducts are in unheated areas;

(F) Insulation of water heaters, water pipes, or steam pipes in unheated spaces and for at least 10 feet from the water heater in unheated areas to at least R-3 if achievable and no insulation is present;

(G) Double-glazed windows (including sliding doors) with a U-value of 0.30 or lower, when replacing single-glazed windows;

(H) Insulated exterior doors with a U-value of 0.20 or lower (R-5 or higher);

(I) Programmable thermostats; or

(J) Blower door tests and blower door assisted whole house air sealing or duct sealing performed by a contractor certified by the Department's Residential Energy Tax Credit technician certification program.

(d) If an applicant undertakes envelope measures, the following requirements apply:

(A) Replacement windows must have a U-value of 0.30 or less for residences.

(B) U-values must be 10 percent better (lower) than code requirements for commercial.

(C) Insulation that exceeds code requirements or when not required by code is an eligible measure if substantial savings and economic criteria required in the OARs are met.

(64) "Research, Development, and Demonstration Facility (RD&D)": A facility that complies with (a) through (f):

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(a) A facility that is not standard practice and that is likely to produce or produces products or technologies that are likely to qualify as a facility in Oregon when commercialized. BETC RD&D applicants' total lifetime project costs will be determined for a defined period established at the time of the initial application and will be capped at \$20,000,000 for renewable energy RD&D and high efficiency CHP RD&D and \$10,000,000 for all other RD&D project types. Additionally, eligible RD&D facilities must comply with one or more of the following criteria:

(A) Research facilities that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development facilities that include the new manufacture or initiation of the capability to produce or deliver facilities in Oregon, excluding development facilities that increase established manufacturing or production capacity in Oregon;

(C) Demonstration facilities that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology though pilot or production scale applications of technology;

(D) Innovative travel reduction facilities that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs;

(E) Facilities that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment; or

(F) Facilities in the Director's determination are likely to achieve Oregon Department of Energy goals.

(b) A facility that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(c) A qualifying RD&D facility that exclusively supports renewable energy resource use will be eligible for a 50 percent BETC; all other qualifying RD&D facilities will be eligible for a 35 percent tax credit.

(d) Eligible costs for a Research, Development or Demonstration facility may include:

(A) Engineering, design and administrative costs

(B) Costs inherent in a research, development and demonstration facility that may not result directly in saved or produced energy. Such costs may include:

(i) Facility design, monitoring, assessment, evaluation and reporting. This includes but is not limited to: the development of standards, specifications, policies and procedures facilitating technology transfer; instruments, and controls.

(ii) Other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.

(C) The following costs related to demonstration model(s) may be considered eligible:

(i) Materials for the demonstration model(s).

(ii) The manufacturing, construction, assembly, and/or installation of the demonstration model(s).

(iii) Testing and monitoring the demonstration model(s).

(D) Eligible costs for a Research, Development or Demonstration facility are not subject to OAR 330-090-0110 (20)(f).

(E) Other eligible costs defined by Oregon Administrative Rule.

(e) Ineligible costs for a Research, Development or Demonstration facility may include:

(A) The lease or purchase of land or building(s) unless the applicant can clearly demonstrate to the Director that the cost is necessary and exclusive to the facility.

(B) Other ineligible costs defined by Oregon Administrative Rule.

(f) A Research, Development or Demonstration facility is not eligible to receive a BETC when the facility's activities are a refinement of an existing technology and do not represent a strategic, new or potentially large benefit to Oregon.

(65) "Residential Dwelling": means a structure or the part of a structure that meets the requirements of the state building codes and is used as a permanent home, residence or sleeping place by one or more persons who maintain a household or by two or more persons who maintain a common household. A BETC may not be claimed for a renewable energy facility

located in, adjacent to, or on a one or two family home unless the home is used exclusively as a rental dwelling.

(66) "Residential Energy Tax Credit Qualifying Equipment": means equipment that qualifies under the standards and rules for the Residential Energy Tax Credit from the Department. The equipment is eligible for the BETC in either of the two following methods:

(a) A facility that consists solely of equipment that is on the qualifying equipment list at the time of the application submittal may apply as outlined in the Oregon Administrative Rules 330-090-0105 using operating schedules, capacity, efficiency and cost information to prove qualification; or

(b) The facility, made up of qualifying equipment may also effectively qualify what would otherwise be an eligible Residential Energy Tax Credit facility through the BETC Program by using the following formula. Residential tax credit amount (from qualifying appliance list) ÷ 0.35 = BETC eligible cost.

(67) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation facilities for travel.

(68) "Service Life": Equipment service life is as established in the 2007 edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook or as determined by the Director for equipment not rated by ASHRAE. The Department may prorate the eligible project cost based on the remaining service life of the equipment. If the baseline facility has exceeded its service life, only an incremental facility will be considered eligible for a tax credit.

(69) "Simple Payback": The total eligible cost of a facility divided by the expected yearly energy cost savings, stated in years.

(70) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy facilities it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(71) "Substantial Energy Savings": Means that the Department has determined that:

(a) A facility, other than a lighting retrofit or sustainable building facility and excluding Research Development & Demonstration, transportation, recycling market development, recycling facility, will save at least 10 percent of the energy used in a given facility;

(b) A lighting retrofit facility will reduce the affected lighting system energy use by at least 25 percent;

(c) The energy facility is a sustainable building practices facility as defined under "Sustainable Building Practices Facility" of this rule; or

(d) The facility measures are measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(72) "Sustainable Building Practices Facility": Means a building facility as defined under "Commercial New Construction" of this rule and that:

(a) Is rated and certified LEED-NC™, LEED-CS™, or LEED-CI™ under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council or is rated and certified by a program approved by the Department that provides comparable performance on environmental measures and equivalent or better energy performance as documented by whole building energy modeling, is commissioned and is verified by an independent third party. In addition, a facility must:

(A) In achieving its LEED™ rating, the facility must earn at least two points under Energy & Atmosphere Credit 1 (Optimize Energy Performance).

(B) In achieving its LEED™ rating, the facility must earn at least one point under Energy & Atmosphere Credit 3 (Enhanced Commissioning).

(b) Each LEED-NC™ or LEED-CS™ facility must calculate and report the building's annual solar income in Btu (not the site income). The calculation must account for the contribution from each face (orientation with surfaces exposed to direct sunlight) and must take into account any

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existing or reasonably expected shading (by other buildings or vegetation, e.g.) of these surfaces. Calculations may ignore such things as rooftop or wall-mounted mechanical facility components.

(c) Facilities using on-site renewable energy production technologies such as photovoltaic or wind technologies may treat these elements as a separate renewable energy resource facility for tax credit purposes, provided that any points earned for such features in the LEED™ rating are not required to achieve the rating on which the Sustainable Building facility credit is to be based. In cases where subtracting such points would result in a lowering of the LEED™ rating (e.g. from Gold to Silver), the tax credit will be awarded on the basis of the lower rating. The rating point total, net of renewable generation credits, can never be less than that required for a Silver rating.

(73) “Transportation District”: A transportation district included in ORS 184.675(7).

(74) “Transportation Facility”: A facility that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. A transportation facility must meet one or more of the following criteria:

(a) Telework defined as working from home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per 12 consecutive months. Eligible costs include purchase and installation of new equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework facilities does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance and operation of any equipment; office furniture and office supplies or training costs.

(b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per 12 consecutive months. Eligible cost includes the purchase or cost of the vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs.

(d) Transit passes used by an applicant’s riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass facility. Applicants must subtract any employee contributions for transit passes from eligible costs.

(e) Bicycle used by an applicant’s riders to reduce vehicle miles traveled a minimum of 45 work days per 12 consecutive months. Maximum eligible costs of \$800 include purchase of bicycles and equipment used to store bicycles. Accessory items, such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or nonprofit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation facility and cannot exceed the cost of the transportation facility. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 work days per 12 consecutive months. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars

available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Transportation Service is defined as a facility that provides transportation services to reduce vehicle miles driven by a single occupant vehicle. The eligible cost for a transportation service facility is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service facility must provide service for a minimum of 150 days per 12 consecutive months. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible if they receive other federal or state funding for the purposes of offsetting the costs. Applicants must subtract any fare-box contributions from eligible costs.

(j) Individualized Travel Behavior Change is defined as a facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants in a specific geographical area or in a targeted group. Pre and post-facility surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Facilities are subject to the VMR cost-effectiveness formula.

(k) Vanpool Program is defined as a facility that is an employer-sponsored or organization sponsored program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but do not include the cost of the vehicle. The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 work days per 12 consecutive months. Facilities are subject to the VMR cost-effectiveness formula.

(L) Transportation Services for K-12 Students is defined as a facility that is a program that provides transportation services for K-12 students during the school year. All entities, including transportation districts, mass transit districts, or metropolitan service districts within communities of greater than 50,000 people, are eligible.

(A) The tax credit amount shall be based on the cost per student and a reasonable estimate of the actual number of students served.

(B) Eligible agencies shall develop a monthly cost per student service, based on but not limited to lost revenues, added costs, and VMR cost-effectiveness to be approved by the Department.

(C) The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles.

(m) The purchase of efficient truck technology for trucks and related truck trailers, as defined in ORS 801.580, for commercial motor vehicles, as defined in ORS 801.208, that are registered under ORS 803.420, or for commercial motor vehicles that are proportionally registered under ORS 826.009 or 826.011. Eligible efficient truck technology, such as an auxiliary power unit (APU), must be recognized as a verified technology by the U.S. Environmental Protection Agency (USEPA) SmartWay Transport Partnership to potentially qualify.

(A) Eligible projects must meet the following requirements:

(i) Retrofit a truck or add to a newly manufactured truck one or more USEPA SmartWay efficiency measures. With a newly manufactured truck, a new trailer with one or more SmartWay efficiency measures may also be included with this project. The new trailer and newly manufactured truck must independently qualify for tax credits; and

(ii) Eligible vehicles must demonstrate Oregon registration with a current Cab Card as part of the Application for Preliminary Certification by:

(I) Commercial (Oregon-only registration operated solely in Oregon) with a red Oregon-only commercial “YC” plate from the Oregon Motor Carrier Transportation Division (MCTD); or

(II) International Registration Plan (IRP), also referred to as Apportioned registration, with a red Apportioned “YA” plate from the Oregon MCTD. For IRP vehicles, eligible facilities must meet the following requirements as part of the application for preliminary certification:

(aa) Provide the two most recent calendar year IRP billing notices that document the percentage of a vehicle’s annual mileage that was driven in Oregon.

(bb) For proposed eligible facilities that have no recent calendar year IRP billing notice documentation, provide a signed project owner statement indicating the anticipated percentage of miles that will be driven in Oregon over the next two years.

(B) Applicants that can document that 15 to 50 percent of the annual mileage of a vehicle that meets the requirement in (A) of this subsection

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occurs in Oregon are eligible to receive a tax credit equal to 35 percent of 71.5 percent of the facility's otherwise eligible certified costs.

(C) Applicants that can document that more than 50 percent of the annual mileage of a vehicle that meets the requirement in (A) of this subsection occurs in Oregon are eligible to receive a tax credit of 35 percent of the facility's eligible certified costs.

(D) Proof that the applicant has a sufficient nexus with the state of Oregon. This includes a dedicated location in Oregon for maintenance, dispatch, and monitoring of facilities.

(E) The facility's simple payback period must be between more than one and fifteen years.

(75) "Transportation Provider": is defined in ORS 469.185(16).

(76) "Transportation Services Contract": is defined in ORS 469.185(17).

(77) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(78) "Vanpool Program": means a program that provides opportunities for a designated group of riders to share the usage of a vehicle to commute between different communities/neighborhoods on a regular basis.

(79) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a facility when compared to single occupant vehicles.

(80) "Waste-to-Energy Facility": means an energy resource facility that recovers materials and energy from a waste stream under conditions listed below. The BETC program intends to encourage the responsible use of all resources including waste streams. Generally, recovery of a material will be preferred in comparison to recovery of energy. In order to respect the embedded energy of a material stream the following criteria have been established to define facilities that do not meet the definition of a recycling facility, but provide environmentally responsible recovery from a waste stream. Therefore, equipment used to recover materials and energy from a waste stream is an eligible facility when all of the following conditions are met:

(a) The value of the marketable materials and energy resources recovered from the waste stream, less the value of the external energy resources consumed in the recovery process is greater than the magnitude of the costs incurred or revenues derived in disposal of the waste stream in standard industry practice.

(b) Recovered material/end product, exclusive of fuel or lubricant, exceeds 50 percent or higher on a dry mass basis.

(c) The facility does not increase the release of toxins, fossil-derived greenhouse gas emissions, or other emissions.

(d) The facility does not divert materials from a higher value use.

(e) The facility has an acceptable energy balance as determined by the Director.

(81) "Wind Facility": means a facility that converts wind power into another energy resource.

(82) "Year": Calendar year.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2006, f. 11-27-06, cert. ef. 12-1-06; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11

330-090-0130

How the Oregon Department of Energy Processes a BETC Application

(1) General:

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification. The final certification consists of the determination of eligible costs for purposes of the tax credit and the issuance of the BETC final certificate.

(b) To begin the review process for each stage, or to change the facility during the review process, an applicant must submit an application on the form approved by the Department. Applications for facilities that use or

produce renewable energy resources, or are listed as renewable energy resources as defined under ORS 469.185, must be submitted under the tiered priority system described in OAR 330-090-0350 and include any additional requirements under this section.

(c) A facility owner planning to use a Pass-through Partner will select the pass-through option on the Application for Preliminary Certification.

(d) The Director may impose conditions in approving a preliminary or final certification that the facility must operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director.

(e) If the Department determines that the applicant qualifies for a BETC, the Department may issue a preliminary certification. The preliminary certification may contain specific criteria and conditions for the facility to meet in order to obtain a final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department may require the applicant to enter a performance agreement or other similar agreement as a condition of approval.

(2) Pre-Approval of Preliminary Certifications: The Director has pre-approved preliminary certifications for the following facilities that the Department has reviewed and determined to be otherwise qualified under these rules:

(a) Alternate energy devices qualifying for a tax credit under the Residential Energy Tax Credit Program, OAR 330-070-0010 through 330-070-0097, for which the Department has determined qualified costs, energy savings, and eligible tax credits. A facility owner may file for a preliminary certification to present documentation supporting different determinations for review and approval.

(b) Pre-qualified hybrid-electric vehicles.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(1) and (2), a completed application for preliminary certification shall be received by the Department on or prior to the erection, construction, installation or acquisition of a facility.

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director. The Director will provide the applicant a written notice relating to the incomplete application and the information needed to make the application complete. If no action is taken within 30 days by the applicant, the application will expire.

(b) Within 120 days after a completed application is submitted the Director will notify the applicant of the status of the application, except as otherwise provided in subsection (5), if the applicant has not been notified otherwise the application has been denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the costs that are eligible (eligible costs) for a BETC up to the maximum amount of certifiable costs under ORS 496.200. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0133(4).

(C) An applicant can re-submit an application that is denied if features of the facility change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Director issues a preliminary certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) Renewable Energy Resource Equipment Manufacturing Facility: If under the provisions of ORS 469.200(2), the Director intends to certify less than the total or no amount of eligible costs of a renewable energy resource equipment manufacturing facility, the Director will notify the applicant in writing of that intent before approving the preliminary certification. The applicant will have 30 calendar days from the date notification was issued to inform the Director in writing whether it wishes to withdraw the application or suspend further consideration of the application until a future date specified or submit additional information in support of the application. If the Director has not received notification or additional infor-

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mation in support of the application within that period of time, the Director may certify less than the total or no amount of eligible costs of the renewable energy resource equipment manufacturing facility. Once eligible costs are certified and a preliminary certification is issued under this section, the certified eligible costs may be revised if conditions under ORS 469.200(2) change or upon notification from the applicant or other information indicating that the scope of the project or the energy facility has changed in such a way to impact the preliminary certificate.

(5) Preliminary Certification After Start of a Facility:

(a) If a facility has been started an applicant may file a written request with the Director for approval of a preliminary certification after facility start. Such a request must contain information in accord with OAR 330-090-0120 and OAR 330-090-0130(5)(b).

(b) The Director may approve preliminary certification after facility start if:

(A) The request is in accord with OAR 330-090-0120;

(B) Special circumstances make application for preliminary certification before facility start up impracticable. Such circumstances include process delays beyond the applicant's control, facility funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of facility start date. Under extraordinary circumstances the Director may extend the waiver period provided the facility serves the aims of the program.

(D) Failing to submit an application for preliminary certification before signing contracts for the facility does not constitute special circumstances supporting a waiver.

(6) How Preliminary Certification Can be Revoked: The Director may alter, condition, suspend, deny or revoke a preliminary certification for a reason listed in this section

(a) A facility, other than a renewable energy resource equipment manufacturing facility, is not completed and a complete final certification application received before 1,095 days (3 years) after the preliminary certification was issued or a further 730 days (2 years) if an extension has been approved. A renewable energy equipment manufacturing facility is not completed and a complete final certification application received before 1,825 days (5 years) after the preliminary certification was issued.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with the Department before facility development starts.

(c) The facility undergoes changes without the changes being approved under OAR 330-090-0130(7).

(d) Any other reason allowed by the amendments to ORS 469.210 (3) in Oregon Laws, 2010, Chapter 76, Section 11.

(7) Amendments to Preliminary Certifications: To change a facility that has a preliminary certification and amend the preliminary certification, the applicant must file a written request with the Director prior to the project completion date.

(a) The request must describe the change to the facility and reasons for the change. It may include changes in cost, tax credit amount, facility design, and materials. The request may also include changes in the amount of energy saved or produced, jobs created, project financing, the applicant, the location, or other matters that demonstrate substantial change in the project's scope. The request must be accompanied by the appropriate fee.

(b) If a request does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director, the department will provide the applicant a written notice relating to the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no changes will be made to the preliminary certification.

(c) Preliminary certifications issued for facilities using or producing renewable energy resources, or facilities listed as renewable energy resources as defined under ORS 469.185, shall not be eligible for consideration of amendments other than those listed below in (A) through (C). An eligible amendment cannot change the tier within which the application was reviewed.

(A) Equipment capacity within 10 percent of the approved specification;

(B) Amendments to the facility that do not result in an increased potential tax credit amount, but increase output or otherwise improve the facility; or

(C) Changes in ownership.

(d) Within 60 days after the applicant files the change request, the Director will decide if the facility as modified complies with these rules.

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.

(B) If it does not comply, the Director will issue an order that denies the change and provide written reasons for the denial.

(8) If the facility does not proceed: The applicant must inform the Director in writing if it does not proceed with the facility or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(9) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant who plans to transfer the tax credit certificate to a Pass-through Partner must complete and file the Pass-through Option Application form supplied by the Department.

(b) If the Pass-through Partner is not yet secured at the time of the Application for Preliminary Certification, the facility owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The Department will not transfer and issue a final certificate to a pass-through partner until the facility owner provides evidence to the Department that the owner has received the pass-through payment in full.

(10) Extension of Preliminary Certification: Applicants, other than for renewable resource manufacturing facilities, who have not previously extended their certification and whose preliminary certification is anticipated to expire prior to completion of the facility may apply for an extension of an additional two years from the current expiry of the preliminary certification.

(a) Applicants must submit a written request to the department, accompanied by the appropriate fee, describing the progress made in developing the facility since the department issued the preliminary certification and verifying that the project will be developed in accordance with the initial approval, within two years from the current end of the preliminary certification and prior to the sunset date of the program. The request shall include the new proposed facility completion date. Requests may be made no earlier than 6 months prior to the expiration of the existing preliminary certification.

(b) If an applicant wishes to make changes other than to the completion date, the applicant must submit a request for amendment as described in ORS 330-090-0130(7).

(c) If a request or original application does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director the department will provide the applicant a written notice specifying the information needed to make the request complete. If the applicant does not provide all of the requested information to the Department within 30 days, the request will expire and no extension will be made to the preliminary certification expiration date.

(d) The department will review the previously approved application against current statute and rules. Within 60 days after the department receives the extension request, the Director will decide if the request complies with these rules.

(A) If it complies, the Director may issue an amended preliminary certification which may contain new or amended criteria, conditions and requirements.

(B) If it does not comply, the Director will issue an order that denies the extension and provide written reasons for the denial.

(11) Final Certification Review Process and Application: An application for final certification must be filed after the facility is completed as defined in these rules.

(a) An application for final certification must include:

(A) Evidence to demonstrate that:

(i) The facility complies with all conditions and criteria of the preliminary certification and with the provisions of ORS Chapter 469 and the rules adopted thereunder;

(ii) The facility remains in compliance with local, state, and federal laws, including local land use laws and with any conditions imposed by the local government as a condition of land use approval; and

(iii) The facility will be maintained and operated for at least five years after the facility is placed into operation, or a lesser period if approved and specified on the preliminary certification.

(B) An account of the facility costs, including prorated costs.

(i) If facility costs are less than \$50,000, the account may be records of facility costs paid or incurred based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may

ADMINISTRATIVE RULES

be required under these rules unless required by the Director to supply verification from a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner. If an applicant has an outstanding binding contract or loan agreement, the account shall demonstrate that payments on contract or loan are not in default; or

(ii) If the facility costs are \$50,000 or more, a certified public accountant, who is not otherwise permanently employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid or incurred based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required under these rules. If an applicant has an outstanding binding contract or loan agreement, the certified public accountant shall include sufficient information to demonstrate that accounts directly related to the facility are not in default.

(iii) The application must include information regarding any federal grants applied for or received in connection with the facility including, without limitation, the grant(s) applied for, the date of each application, the amount of the requested grant(s), when applicant expects to receive notice of grant approval or denial and any other information that may be required by the director. Final certified costs will be reduced dollar for dollar by any federal grant amount received by a taxpayer in connection with the facility.

(C) For a Sustainable Building Practices Facility, a copy of the facility U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the rules and method of calculation will be accepted in lieu of facility cost receipts.

(D) Proof the facility is completed and operating.

(E) If the facility is leased or rented, a copy of the lease or rental agreement.

(F) For Alternative Fuel Vehicle facilities, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(G) Documentation that the applicant and facility owner or owners are current on their property taxes where the facility is located if appropriate; and

(H) Other data the Director finds are needed to assure a facility complies with these rules and conditions imposed in the preliminary certificate

(I) The names of the person or persons who are to be issued the final certificate. If the final certificate is to be issued to a pass-through partner, the Department will not issue the certificate until the appropriate criteria, conditions and requirements of the preliminary and final certification and these rules are satisfied.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, f. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 4-2008, f. 6-19-08, cert. ef. 6-20-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11

330-090-0133

How ODOE Processes a Final Application

(1) Processing the Final Certification: To qualify for a Final Certification, the facility must be completed as described in the Application for Preliminary Certification and the Preliminary Certificate. Any changes to the Preliminary Certificate and/or Application for Preliminary Certification must complete the amendment process outlined in these rules prior to the project completion date. Failure to obtain approval through the amendment process may result in denial of the Final Certification Application.

(a) Applications shall be considered received for the purposes of ORS 469.220 on the date marked received by the department, unless the application is incomplete. If the application for final certification is not complete, the date marked received by the department on the complete application containing all of the required information shall be considered the received date.

(A) When a facility owner chooses to transfer the tax credit under ORS 469.206, the Department may hold the application for final certification until pass-through partner(s) information is received by the Department. Any application in which the facility owner has indicated a choice to transfer the tax credit under ORS 469.206 is not a “completed

application” until the Department receives both the completed final certification application form from the facility owner and the completed pass-through partner agreement form for the tax credit, or portion of the tax credit, being transferred to that pass-through partner. The receipt of the completed application by the Department begins the certification period, as provided in ORS 469.220.

(B) If more than one pass-through partner is being transferred the credit, facility owners may have up to 18 months from the date the first pass-through partner agreement form is received by the Department to begin each certification period of the tax credit. For pass-through partner(s) agreement forms received by the Department after the 18-month period, the certification period begins 18 months from the date the first pass-through partner agreement form was received by the Department.

(C) For purposes of administering the sunset of the program, the Department may issue a Final Certificate to a facility owner who previously indicated a choice to transfer a tax credit to a pass-through partner under ORS 469.206, if the Department has not received a completed application that includes the signed pass-through partner agreement form at least sixty days prior to the sunset date for the BETC program provided under ORS 315.357. The Final Certificate will be issued to a facility owner if the only piece causing the application for final certification to be incomplete is the pass-through partner(s) agreement form.

(b) Within 30 days after a final certification application is received, the Director will determine whether the application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards and preliminary certification conditions adopted by the Director. If it is not complete, the applicant will be provided a written explanation describing deficiencies. If it is complete, the Director will process the application. Within 60 days after a completed final certification application is received the director will either approve or deny the final certification. Prior to the program sunset, the Director will process a complete final certification application received by April 30, 2012. The Director does not guarantee that a complete final certification application received after April 30, 2012 will be processed prior to the program sunset.

(c) If the Director approves the application, the Director will issue final certification, which will state the amount of certified costs, reduced as applicable by any federal grants received, and the amount of the tax credit approved. The final certification may contain additional criteria and conditions that must be met in order to retain tax credit benefits or the tax credit certificate may be subject to revocation. If the facility fails to meet any of the criteria, conditions and requirements established in the final certification, the facility owner must notify the Department within 30 days.

(d) For efficient truck technology facilities the department may, upon the request of the applicant, issue no more than two final certificates for each preliminary certification, up to the amount of the preliminary certification.

(2) Basis for Denying Tax Credit Benefits:

(a) If the Director does not approve the application, the Director will provide written notice of the action, including a statement of the findings and reasons for the denial by regular and certified mail.

(b) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(c) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied pursuant to ORS 469.215(4).

(d) The Director may deny a final certificate if:

(A) The applicant does not provide information about the facility in a reasonable time after the Director requests it;

(B) The facility is significantly different than the proposed facility for which the preliminary certification was issued;

(C) The applicant misrepresents or fails to construct or operate the facility;

(D) The applicant fails to demonstrate that the facility described in the application is separate and distinct from previous or current applications reviewed by the Department;

(E) The facility does not meet all of the conditions and requirements contained in the preliminary certificate; or

(F) The applicant is unable to demonstrate that the facility complies with all applicable provisions of ORS Chapter 469 and the rules adopted thereunder.

(3) Basis for Revoking Tax Credit Benefits

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(a) The Director may revoke certificates as provided in ORS 469.225 and ORS 315.354(5). For the purposes of this section, "fraud or misrepresentation" means any misrepresentation made by an applicant for a preliminary or final certification, including but not limited to, misrepresentations as to the applicant's financial viability, facility construction and operation, or any other information provided as part of an application for a preliminary or final certification.

(b) After the Director issues a final certificate, an applicant must notify the director in writing of any of the following conditions:

- (A) The facility has been moved;
- (B) Title to the facility has been conveyed;
- (C) The facility is subject to or part of a bankruptcy proceeding;
- (D) The facility is not operating; or
- (E) The term of a leased facility has ended.

(c) Pursuant to ORS 469.225, upon receiving information that a BETC certification was obtained by fraud or misrepresentation, or that the facility has not been constructed or operated in compliance with the requirements in the certificate, the Director shall revoke the certificate for the facility.

(d) A revocation of the final certification or portion of a certification due to fraud or misrepresentation results in the loss of all prior and future tax credits in connection with that facility. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469.206, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(e) For a facility other than a renewable energy resource equipment manufacturing facility, the revocation of a certificate due to failure to construct or operate the facility in compliance with the certificate results in the loss of any tax credits not yet claimed by the facility owner. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469.206, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(f) For a renewable energy resource equipment manufacturing facility, revocation of the certificate due to misrepresentation, fraud or failure to construct or operate the facility in compliance with the certificate results in the loss of all prior and future tax credits. If all or a part of the tax credit certificate has been transferred to a Pass-through partner under ORS 469.206, the certificate is not considered revoked as to the Pass-through partner, but the facility owner is liable for the amount of tax credits claimed or that could be claimed.

(4) Sale or Disposition of the Facility after Final Certification:

(a) Pursuant to ORS 315.354(5), upon receiving notice that the facility has been sold or otherwise transferred, the Director will revoke the final certificate, as of the date of the disposition of the facility, unless the BETC for the facility has already been transferred under ORS 468.206.

(b) The new owner or new or renewed lessee of a facility may apply for a final certificate. The request must comply with OAR 330-090-0130(10) and include information to allow the Director to determine the amount of tax credit not claimed by the former owner or former lessee. If the facility continues to comply with the requirements set out in these rules and any applicable conditions imposed by the Director, the Director will issue a new final certification consistent with the provisions of ORS 315.354(5).

(5) Request for Reconsideration: No later than 60 days after the Director issues an order on a preliminary certification, amendment to a preliminary certification, final certification, or canceling or revoking a final certificate under these rules, the applicant or certificate holder may request reconsideration in writing.

(6) Inspections: After an application is filed under ORS 469.205 or ORS 469.215 or a tax credit is claimed under these rules, the Department may inspect the facility. The Department will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 3-2010, f. & cert. ef. 4-30-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11

330-090-0140

Pass-through Option Facilities

(1) A pass-through Partner may purchase a BETC certificate from an applicant with a facility that is otherwise eligible for the tax credit in return for a cash lump-sum pass through payment equivalent to the net present

value of the transferable tax credit. For the purposes of these rules, the net present value of the credit for purposes of the pass through payment is calculated based on the formulas below:

(a) For original preliminary certifications issued on or after January 1, 2010:

(A) For a five year tax credit the net present value is determined by taking the total tax credit amount divided by 1.3579. Tax Credit/1.3579

(B) For a one year tax credit the net present value is determined by taking the tax credit amount divided by 1.0309. Tax Credit/1.0309

(b) For original preliminary certifications issued on or before December 31, 2009:

(A) 50percent BETC more than \$20,000 in eligible costs — 33.5 percent pass-through rate.

(B) 50percent BETC \$20,000 or less in eligible costs — 43.5 percent pass-through rate.

(C) 35percent BETC more than \$20,000 in eligible costs — 25.5 percent pass-through rate.

(D) 35percent BETC \$20,000 or less in eligible costs — 30.5 percent pass-through rate.

(E) Homebuilder Installed Renewable Energy Facility or High Performance Home tax credits — 87 percent of tax credit amount.

(c) If an applicant elects to use the pass through option, the net present value of the credit (the pass through payment) for a facility is determined by the date the department issues the initial preliminary certification for the project.

(2) An Investor-Owned Utility may choose to become a utility Pass-through Partner under the provisions of this section or participate as a Pass-through Partner under other Provisions of these rules that would apply to any other Pass-through Partner.

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-through Partner.

(b) Preliminary certification standards and process:

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Director shall decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.

(C) Within 120 days after a completed application is filed, the Director shall notify the applicant of the status of the application, if the applicant has not been notified otherwise the application has been denied.

(D) The application for preliminary certification of the pass-through must include a detailed work plan. The applicant and ODOE must mutually agree upon the work plan and program. The detailed work plan must include:

(i) A copy or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered,

(ii) A not to exceed estimate of the total eligible costs that will be incurred for that calendar year with an estimate of the number of rental dwellings that will be affected, and

(iii) An agreement that upon submitting the complete final certification application the applicant will provide a detailed description of each facility owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each facility's owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each facility including all of the information required in 110-090-0130(11) of these rules.

(A) An application must contain:

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, and the total facility costs made that period for which the applicant is applying for credit.

(ii) The nominal value of credits for which the applicant applies, not to exceed the total eligible costs multiplied by the existing net present value of the tax credit for the pass-through payment as defined in OAR 330-090-0140(1).

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(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i). A sample selected by the Department of individual weatherization location audit reports will be submitted for at least 15 percent of the facility sites.

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s),

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.

(vii) If costs associated with an individual rental dwelling are \$50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, of costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by these rules.

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.

(B) Within 60 days after a complete final certification application is filed, the Director will approve or deny final certification, with reasons for the action. The Director will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Director issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0133(5). The Director will approve final certification if:

(i) The applicant provides the owners of existing rental dwelling units listed in OAR 330-090-0140(2)(c)(A)(i) with:

(I) A low-interest loan, as defined by these rules, up to \$5,000 per dwelling unit for ECMs included in OAR 330-090-0140(2)(c)(A)(iv);

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment must be a percentage of the cost-effective portion of the energy conservation measures as approved by the Oregon Public Utility Commission, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; including the net present value of the tax credit for the pass through payment as defined in OAR 330-090-0170(1) for the EMCs at that specific site address the IOU may claim; or

(III) Such other payments approved by the Director to pay for ECMs in rental dwellings. This includes a payment for the net present value of the tax credit that exceeds the amount of the low-interest loan. This payment will apply first to reduce the amount of the loan with the balance paid to the owner of the rental dwelling unit.

(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08; DOE 2-2009(Temp), f. & cert. ef. 11-3-09 thru 5-1-10; DOE 1-2010, f. & cert. ef. 1-8-10; DOE 4-2010(Temp), f. 5-21-10, cert. ef. 5-27-10 thru 11-2-10; Administrative correction 11-23-10; DOE 14-2010, f. & cert. ef. 11-23-10; DOE 3-2011(Temp), f. 4-15-11, cert. ef. 4-18-11 thru 10-14-11

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Department of Environmental Quality Chapter 340

Rule Caption: Ballast Water Management: Revise and adopt rules to align with Oregon Revised Statutes.

Adm. Order No.: DEQ 4-2011

Filed with Sec. of State: 3-17-2011

Certified to be Effective: 3-17-11

Notice Publication Date: 12-1-2010

Rules Adopted: 340-143-0030, 340-143-0040, 340-143-0050, 340-143-0060

Rules Amended: 340-143-0001, 340-143-0005, 340-143-0010, 340-143-0020

Subject: The adopted rules further reduce the risk of transporting invasive species to Oregon waterways by enhancing ballast water management for commercial vessels operating in Oregon. Specifically, the rules align applicable definitions and discharge exemptions with current statutes, enhance vessel inspection and compliance verification capabilities, require vessels declaring safety exemptions to obtain departmental authorization prior to discharging ballast water, and establish restrictions on the management and disposal of sediments that accumulate at the bottom of ballast tanks.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-143-0001

Authority, Purpose, and Scope

(1) These rules establish procedures for management of ballast water, and reporting of ballast water management information as regulated under ORS 783.620 through 783.640. The rules' purpose is to protect waters of the state from ecological and economic threats associated with aquatic non-indigenous species.

(2) All vessels greater than 300 gross tons equipped with ballast water tanks traversing into waters of the state are subject to these rules, except a vessel that:

(a) Traverses only internal waters of the state; or

(b) Traverses only the territorial sea of the United States and does not enter or depart an Oregon Port or navigate waters of the state.

(3) Under ORS 783.630 (2), these rules do not authorize the spilling or releasing of any oil or hazardous materials in a manner prohibited by state or federal laws or regulations. Ballast water carried in any tank containing a residue of oil or any other pollutant must be discharged in accordance with applicable regulations.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02; DEQ 4-2011, f. & cert. ef. 3-17-11

340-143-0005

Definitions

(1) "Ballast Water" means any water and associated sediment used to manipulate the trim and stability of a vessel.

(2) "Cargo Vessel" means a ship in commerce, other than a tank vessel or a vessel used solely for commercial fish harvesting, of 300 gross tons or more.

(3) "Coastal Ocean Exchange" means the exchange of ballast water in an area no less than 50 nautical miles from any shore and where the water depth exceeds 200 meters.

(4) "Common Waters Zone" means the Pacific Coast of North America between 40 and 50 degrees north latitude.

(5) "DEQ" means the Oregon Department of Environmental Quality.

(6) "Exchange" means to replace the water in a ballast tank using either flow-through exchange, empty/refill exchange, or other exchange methods recommended or required under U.S. Coast Guard rules, 33 CFR, part 151.2035.

(7) "Exclusive Economic Zone" extends from the baseline of the U.S. territorial sea seaward 200 nautical miles.

(8) "High-risk Ballast Water" means unexchanged or untreated ballast water obtained from a coastal area outside the common waters zone identified in this rule.

(9) "Internal Waters of the State" means those waters of this state that do not have shared jurisdiction with an adjacent state.

(10) "Nonindigenous Species" means any species or other viable biological material entering an ecosystem beyond its natural range. This also includes seeds, eggs, spores and other biological material entering an ecosystem beyond its natural range.

(11) "Oil" means oil, gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse and any other petroleum-related product.

(12) "Open Sea Exchange" means the exchange of ballast water that occurs in an area no less than 200 nautical miles from any shore and where the water depth exceeds 2,000 meters.

(13) "Pacific Coast Region" means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California.

(14) "Passenger Vessel" means a ship of 300 gross tons or more, carrying passengers for compensation.

(15) "Port" means any place to which a vessel is bound to anchor or moor.

(16) "Sediment" means any matter that settles out of ballast water.

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(17) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

(18) "Tank Vessel" means a ship that is constructed or adapted to carry oil in bulk as cargo or cargo residue other than:

- (a) A vessel carrying oil in drums, barrels or other packages;
- (b) A vessel carrying oil as fuel or stores for that vessel; or
- (c) An oil spill response barge or vessel.

(19) "Territorial Sea of the United States" means the waters extending three nautical miles seaward from the coastline in conformance with federal law.

(20) "Vessel" means a tank vessel, cargo vessel or passenger vessel.

(21) "Voyage" means any transit by a vessel destined for any Oregon port.

(22) "Waters of the State" mean natural waterways including all tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in Oregon, navigable and non-navigable, including that portion of the Pacific Ocean that is within Oregon's boundaries.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02; DEQ 4-2011, f. & cert. ef. 3-17-11

340-143-0010

Ballast Water Management: Discharge Prohibitions

(1) Discharge of ballast water containing oil or hazardous material into waters of the state is prohibited.

(2) Vessels carrying ballast water into waters of the state must not discharge ballast water unless:

(a) The vessel discharges ballast water only at the same location where the ballast water originated, provided that the master, operator or person in charge of the vessel can demonstrate that the ballast water to be discharged was not mixed with ballast water or sediment from an area other than mid-ocean waters. For purposes of this subsection, "same location" means an area within one nautical mile of the berth or within the recognized breakwater of an Oregon port or place, at which the ballast water to be discharged was loaded;

(b) The owner or operator of the vessel conducted proper ballast water exchange management practices before entering waters of the state, such that:

(A) An open sea exchange was conducted for ballast tanks containing water sourced outside the Exclusive Economic Zone; or

(B) A coastal ocean exchange was conducted for ballast tanks containing water sourced from a port within the North American Pacific Coast Region;

(c) The ballast water was solely obtained from mid-ocean waters that are no less than 200 nautical miles from any shore and where water depth exceeds 2,000 meters;

(d) The ballast water originated solely from the common waters zone, as defined by OAR 340-143-0005 (5);

(e) The ballast water originated solely from municipal or treated drinking water sources and is not mixed with ballast water obtained from areas other than open sea waters;

(f) The ballast water had been treated in a manner authorized by OAR 340-143-0050; or

(g) The vessel owner or operator declares a safety exemption in a manner consistent with ORS 783.635 (2)(b) and OAR 340-143-0040.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02; DEQ 4-2011, f. & cert. ef. 3-17-11

340-143-0020

Ballast Water Management: Reporting, Management Plans and Recordkeeping

(1) A vessel owner or operator covered by OAR chapter 340, division 143 must report ballast water management information to DEQ at least 24 hours before entering waters of the state. When the vessel's voyage is less than 24 hours in total duration, the report must be submitted prior to departing the vessel's port or place of departure. The report is required whether or not the owner or operator plans to discharge ballast water into waters of the state. Compliance with these reporting requirements may be met by sending the report to DEQ via e-mail (ballast.water@deq.state.or.us) fax, or mail. Vessel owners or operators who rely on a third party to collect, forward or submit ballast water reporting forms are responsible for ensuring that DEQ receives the ballast water management information as required in this section. Electronic reporting must be submitted using methods and file formats approved by DEQ.

(2) The report must be submitted on a form acceptable to the U.S. Coast Guard pursuant to 33 CFR part 151, unless DEQ approves an alternative format in writing.

(3) If a vessel owner or operator alters or plans to alter its ballast water management for any reason after reporting its ballast water management information, the owner or operator must submit an amended ballast water management report to DEQ. An amended reporting form must be filed at the time of first known or predictable change of destination, and immediately upon completion of discharge operations resulting in changes to actual volume of ballast water discharged.

(4) Any owner or operator failing to report ballast water management information as required by this rule must file the required report immediately upon discovering the violation.

(5) Vessel owners or operators must develop and maintain on board a ballast water management plan that is specifically developed for the vessel and that allows those responsible for the plan's implementation to understand and follow the vessel's ballast management strategy. The contents, training requirements and availability must be consistent with ballast water management plan regulations established by the U.S. Coast Guard under 33 CFR 151.2035a subpart D.

(6) Vessel owners or operators must record all ballast water and sediment management operations in the vessel's ballast water log, record book or other suitable documentation system.

(a) Content. Vessel owners or operators must maintain a version of the ballast water log, record book or other suitable documentation system in English on board the vessel that, at a minimum:

(A) Records each operation involving ballast water or sediment management;

(B) Describes each such operation, including the location and circumstances of, and the reason for, the operation;

(C) Records the exact time and position of the start and stop of the ballast water exchange or treatment operations for each tank; and

(D) Describes the nature and circumstances of any situation under which a safety exemption from ballast management requirements was declared.

(b) Availability. Vessel owners or operators must make the ballast water log or record book readily available for examination by DEQ at all reasonable times. The vessel owner or operator must transmit to DEQ any information about the vessel's ballast operations that DEQ requires.

(c) Retention period. The ballast water log or record book must be available on board the vessel for a minimum of two years after the date on which the last entry in the book is made.

(d) Required signatures. DEQ will require that each completed page and each completed vessel exchange or treatment operation in the ballast water log or record book be signed and dated by the vessel owner or operator or responsible officer; and that such owner, operator or responsible officer attest to the accuracy of the information provided and certifies compliance with the vessel ballast water management plan.

(e) Alternative means of recording. The ballast water log or record book may be an electronically recorded system or integrated into another record book or system. At a minimum, any alternative method must meet provisions of this section.

(f) Records Storage for unmanned barges. If no secure location is available to store records on unmanned barges, these vessel operators may meet provisions of this section by storing records on an associated tug or at other accessible locations and must provide logbook records to DEQ on request.

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

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02; DEQ 4-2011, f. & cert. ef. 3-17-11

340-143-0030

Ballast Water Management: Vessel Inspections

(1) DEQ or its agent is authorized to board and inspect vessels, without advance notice, to provide technical assistance, assess compliance and enforce Oregon ballast water management rules as provided under ORS 783.620-640, as long as such inspections are conducted in accordance with standards described in this rule. DEQ may prioritize vessel inspections based on:

(a) Reporting compliance,

(b) Information submitted in ballast water reporting forms,

(c) Discharge behavior; or

(d) Other applicable criteria to assess the risk of introducing non-indigenous species.

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(2) Conditions. DEQ inspections shall be conducted under the following conditions:

(a) Authorized inspectors. Only DEQ employees, agents or specifically authorized contractors are authorized to conduct such inspections;

(b) Time. Inspections may be conducted at any time. Reasonable efforts must be taken to not unduly interrupt normal cargo operations of the vessel. Vessel cargo operations may be interrupted when it appears to inspectors that the discharge of unexchanged or untreated ballast water or sediments may be occurring or is imminent;

(c) Location. DEQ may conduct inspections when the vessel is at anchor or in port within Oregon waters;

(d) Identification. Inspectors must have official identification, announce their presence and intent at the time of inspection, perform their duties in a safe and professional manner, and follow all appropriate ship safety requirements;

(e) Vessel escort. The vessel owner or operator must provide an employee to escort the inspector or inspectors.

(f) Safety. Nothing in this section relieves the vessel owner or operator of the responsibility for ensuring the vessel's safety and stability or the safety of the crew and passengers.

(3) Purpose. Vessel boarding may occur for any of the following reasons:

(a) To verify regulatory compliance under ORS 783.620 through ORS 783.640. The scope of compliance verification inspection activities is described in section (4) of this rule;

(b) To provide technical assistance and explain details of state ballast water management regulations. The inspector may also help provide details on other west coast state and federal ballast law; or

(c) To provide outreach and education about best management practices that may further reduce the likelihood of transporting aquatic non-indigenous species.

(4) Scope. DEQ shall limit vessel inspection to those areas reasonably necessary to inspect ballast management-related activities. DEQ may board a vessel and conduct compliance verification and inspection activities, including:

(a) An audit of vessel ballast water management documentation to verify compliance with state laws. An audit consists of reviewing the vessel's ballast water reporting forms, management plan and record book as required in this section. In addition, the inspector may request and review any other records relating to ballast management operations including the Deck Log, GPS Log, Soundings Log, Stability Reports, Engine Room Log and Oil Record Book. Vessel operators must maintain a concise record of their ballast water management in order to expedite the timeliness and efficiency of the documentation audit.

(b) A collection of samples from ballast tanks. Sampling may require the vessel's crew to provide safe access to ballast tanks for sampling, including lighting and ventilation of cargo holds, spaces and voids as needed. The vessel's crew will open ballast tank manhole covers and present the tank ready for sample access by taking the head off the tank level as necessary to preclude tank overflow. If tank certification is necessary for access, the vessel operator will be responsible for any marine chemist fees. Where safe and practical, an inspector may require a sample of tank sediments, collected by the vessel operator under DEQ observation or by the DEQ inspector.

Stat. Auth.: ORS 468.020, 783.620 - 783.640
Stats. Implemented: ORS 783.620 - 783.640
Hist: DEQ 4-2011, f. & cert. ef. 3-17-11

340-143-0040

Ballast Water Management: Emergency Management Alternatives for Vessel's Declaring Safety Exemption Discharge of High-Risk Ballast Water

(1) Unexchanged or untreated ballast water may not be discharged into waters of the state without DEQ review and authorization. This is to provide DEQ with sufficient time to determine whether ballast water proposed for discharge represents a high-risk for introduction of nonindigenous species and whether or not feasible management alternatives are available to minimize that risk and protect waters of the state.

(2) Vessel owners or operators requesting safety exemptions under ORS 783.635 (2)(b) must file a ballast water reporting form clearly identifying the request, and provide sufficient additional information for DEQ to evaluate the request and determine whether an emergency ballast water management alternative is warranted.

(a) Reporting Requirements. Vessel operators requesting a safety exemption must notify DEQ of their intent on the ballast water reporting form required under ORS 783.640. Notification requires writing the words

"safety exemption" on the form where it asks "If no ballast treatment conducted, state reason why not:" and stating the cause as either "adverse weather," "vessel design limitation," "equipment failure" or "extraordinary condition."

(A) Vessel operators may rescind a safety exemption claim by filing an amended ballast water reporting form and notifying DEQ as required in this section.

(B) Vessel operators using treatment technologies and claiming a safety exemption due to equipment failure must conduct an open sea exchange or explain why that was not possible.

(b) Discharge authorization requirement. A vessel owner or operator shall not discharge untreated or unexchanged ballast water without DEQ authorization, except:

(A) Where discharging is necessary to prevent jeopardy to the vessel, crew or passengers, or

(B) For safety exemption discharges from unmanned barges, in which case DEQ shall review ballast water reporting form information and notify the vessel operator if further case review and discharge authorization are required, in accordance with subsection (c).

(c) Case Review. DEQ will review safety exemption claims and determine whether alternative management strategies are feasible and necessary. DEQ will complete case review within 10 days of receiving safety exemption notification on the vessel's ballast water reporting form. When it completes its safety exemption review, DEQ will notify the vessel owner or operator whether they have authorization to discharge or whether ballast water management alternatives, referenced in section (4), are required.

(3) DEQ may identify high-risk ballast water from safety exemption cases using factors including but not limited to:

(a) A nonindigenous species profile of source waters;

(b) The volume and frequency of exchanged ballast water discharged;

(c) Design limitations in vessels that prevent effective ballast exchanges;

(d) Voyage characteristics within 50 nautical miles that may preclude requirements to conduct ballast exchange outside of 50 nautical miles;

(e) Vessel owner or vessel operator compliance history; or

(f) Frequency of vessel claims for safety exemption.

(4) Alternative Management strategies options for responding to high-risk ballast water discharge. For vessels requesting authorization to discharge high-risk ballast water, DEQ shall identify one or more of the following options:

(a) Conduct an open sea or coastal ocean ballast exchange after safety exemption conditions are rectified;

(b) Discharge into DEQ-specified alternative waters;

(c) Employ a ballast water treatment alternative using DEQ-approved methods, or using a ballast treatment system acceptable under 340-143-0050;

(d) Discharge only the minimum amount necessary to complete a safe operation; or

(e) Retain all ballast water on-board.

(5) Alternative Discharge Areas. DEQ, in consultation with the U.S. Coast Guard and the state of Washington, when applicable, may identify alternative locations for the discharge of unexchanged or untreated ballast water.

(6) Safety. Nothing in this section relieves the vessel owner or operator of the responsibility for ensuring the vessel's safety and stability or the safety of the crew and passengers.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 4-2011, f. & cert. ef. 3-17-11

340-143-0050

Ballast Water Management: Use of Ballast Water Treatment Systems

(1) Discharge Standards. Reserved

(2) Use of ballast water treatment systems. Ballast water treated in compliance with federal discharge standards or treated using technology approved for shipboard use by the U.S. Coast Guard or the U.S. Environmental Protection Agency may be discharged to waters of the state unless discharge violates section (1).

(3) As an alternative to discharging high-risk ballast water identified in 340-143-0040, DEQ may authorize the use of ballast water treatment systems identified as promising technology by the U.S. EPA, U.S. Coast Guard or neighboring states.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 4-2011, f. & cert. ef. 3-17-11

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30-10, cert. ef. 1-1-11; DFW 10-2011(Temp), f. 2-10-11, cert. ef. 2-17-11 thru 6-29-11; DFW 22-2011(Temp), f. 3-16-11, cert. ef. 3-17-11 thru 6-29-11

340-143-0060

Ballast Water Management: Ballast Tank Sediment

(1) Except during normal operation of ballast pump systems, a vessel operator may not remove or dispose of unsuspended sediment from spaces designed to carry ballast water into waters of the state.

(2) The cleaning of ballast tanks within Oregon waters is prohibited except under controlled arrangements in port or in dry dock. Fouling organisms and sediments removed during the cleaning of ballast tanks may not be discharged to waters of the state and must be disposed of in accordance with local, state and federal law.

(3) DEQ may approve sediment disposal facilities. These facilities must provide for the disposal of such sediment in a way that effectively eliminates the risk of nonindigenous species and does not impair or damage the environment, human health or property, or resources of the disposal area.

Stat. Auth.: ORS 468.020, 783.620 - 783.640
Stats. Implemented: ORS 783.620 - 783.640
Hist: DEQ 4-2011, f. & cert. ef. 3-17-11

Department of Fish and Wildlife Chapter 635

Rule Caption: Recreational Sturgeon Fisheries Close In the Willamette River Downstream of Willamette Falls.

Adm. Order No.: DFW 22-2011(Temp)

Filed with Sec. of State: 3-16-2011

Certified to be Effective: 3-17-11 thru 6-29-11

Notice Publication Date:

Rules Amended: 635-017-0095

Rules Suspended: 635-017-0095(T)

Subject: Amended rule closes the recreational white sturgeon fishery in the lower Willamette River downstream of Willamette Falls, including Multnomah Channel and the Gilbert River, effective March 17, 2011. Revisions are consistent with action taken March 15, 2011 by the State of Oregon.

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 open to the retention of white sturgeon three days per week, Thursday, Friday, and Saturday, from February 17 through March 16.

(3) The retention of white sturgeon in the areas identified in section (2) of this rule is prohibited March 17 through December 31.

(4) Bank angling is prohibited from the east shore of the Willamette River the entire year in the area beginning west of Highway 99E, at the northern-most extent of the parking area near the intersection of 8th Street and Highway 99E in Oregon City, approximately 290 feet downstream of the Oregon City/West Linn bridge (Hwy 43) and extending upstream approximately 1715 feet to the retaining wall extending into the Willamette River at the NW corner of the Blue Heron Paper Mill.

(5) Only white sturgeon with a fork length of 38-54 inches may be retained. Retention of green sturgeon is prohibited all year in all areas.

(6) Angling for sturgeon, including catch-and-release, is prohibited seven days per week during May 1 through August 31 from Willamette Falls downstream to the I-205 Bridge.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 90-2010(Temp), f. 6-29-09, 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-

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

Adm. Order No.: DFW 23-2011

Filed with Sec. of State: 3-21-2011

Certified to be Effective: 3-21-11

Notice Publication Date: 2-1-2011

Rules Amended: 635-017-0095, 635-023-0095, 635-041-0045, 635-041-0065, 635-042-0010, 635-042-0032, 635-042-0060, 635-042-0130, 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180

Subject: These amended rules are needed to amend and/or establish commercial and recreational fishing seasons for spring Chinook, sturgeon, and smelt in the Columbia and Willamette rivers and/or Select Areas. Additional rule modifications are needed to: (1) modify non-treaty commercial fishing gear regulations; (2) authorize commercial sales for Treaty Indian fisheries downstream of Bonneville Dam; and (3) correct the legal length measurement for white sturgeon in the Treaty Indian winter commercial fishery. House-keeping and technical corrections to the regulations were made to ensure rule consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-017-0095

Sturgeon Season

(1) The **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 open to the retention of white sturgeon three days per week, Thursday, Friday, and Saturday during the period from February 17 until the harvest guideline is met.

(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 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030

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; DFW 10-2011(Temp), f. 2-10-11, cert. ef. 2-17-11 thru 6-29-11; DFW 22-2011(Temp), f. 3-16-11, cert. ef. 3-17-11 thru 6-29-11; DFW 23-2011, f. & cert. ef. 3-21-11

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, Multnomah Channel, and the Gilbert River, is open to the retention of white sturgeon with a fork length of 38–54

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inches, three days per week, Thursdays through Saturdays, during the following periods:

- (a) January 1 through July 31; and
- (b) October 8 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through October 7.

(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 14 through June 26; and
- (c) July 1 through July 4 (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 13, from June 27 through June 30, and July 5 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) Effective 12:01 a.m. Saturday February 19, 2011 the retention of sturgeon in Bonneville Reservoir and tributaries is prohibited.

(10) 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.

(11) The retention of white sturgeon in the area identified in section (10) of this rule is prohibited August 1 through January 31.

(12) Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

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; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-11 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11

635-041-0045

Closed Commercial Fishing Areas

Unless otherwise specified in this rule and OAR 635-041-0063, the following waters are closed to commercial fishing:

- (1) All Oregon tributaries of the Columbia River.

(2) The Columbia River westerly and downstream of the Bridge of the Gods except:

(a) Fisheries conducted by the Yakama, Warm Springs and Umatilla tribes downstream of Bonneville Dam (bank fishing only) under provisions of the agreements with the states of Oregon and Washington are open until further notice.

(A) Allowable sales include Chinook, steelhead, sockeye, coho, walleye, shad, yellow perch, bass and carp. Sturgeon caught in the tribal fisheries below Bonneville Dam may not be retained or sold. Fish may not be sold on USACE property below Bonneville Dam, but may be caught and transported off USACE property for sale.

(B) Gear is restricted to subsistence fishing gear which includes hoop-nets, dipnets, spears, gaffs, clubs, fouling hooks and rod and reel with hook-and-line.

(C) Salmon, steelhead, walleye, shad, carp, bass and yellow perch landed during an open treaty commercial fishing period may be sold at any time.

(b) Platform and hook-and-line fisheries from the Bridge of the Gods downstream to the subsistence fishing deadline as described in OAR 635-041-0020(1) are open to commercial sales whenever sales are authorized for platform and hook-and-line fisheries in the remainder of Bonneville Pool.

(3) The Columbia River easterly and upstream of a line extending at a right angle across the thread of the river from a deadline marker one mile downstream of McNary Dam.

(4) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at the west end of 3-Mile Rapids located approximately 1.8 miles below The Dalles Dam, upstream to a line from a deadline marker on the Oregon shore located approximately 3/4 mile above The Dalles Dam east fishway exit, thence at a right angle to the thread of the river to a point in midriver, thence downstream to Light "1" on the Washington shore; except that dip nets, bag nets, and hoop nets are permitted during commercial salmon and shad fishing seasons at the Lone Pine Indian fishing site located immediately above The Dalles Interstate Bridge.

(5) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at Preachers Eddy light below the John Day Dam and a line approximately 4.3 miles upstream extending from a marker on the Oregon shore approximately one-half mile above the upper easterly bank of the mouth of the John Day River, Oregon, extending at a right angle across the thread of the river to a point in midriver, thence turning downstream to a marker located on the Washington shore approximately opposite the mouth of the John Day River.

(6) The Columbia River within areas at and adjacent to the mouths of the Deschutes River and the Umatilla River. The closed areas are along the Oregon side of the Columbia River and extend out to the midstream from a point one-half mile above the intersection of the upper bank of the tributary with the Columbia River to a point one mile downstream from the intersection of the lower bank of the tributary with the Columbia River. All such points are posted with deadline markers.

(7) The Columbia River within an area and adjacent to the mouth of the Big White Salmon River. The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

(8) The Columbia River within an area at and adjacent to the mouth of Drano Lake (Little White Salmon River). The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upriver of the outlet of Drano Lake.

(9) The Columbia River within an area and adjacent to the mouth of the Wind River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

(10) The Columbia River within areas at and adjacent to the mouth of Hood River. The closed area is along the Oregon side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at end of the breakwall at the west end of the Port of Hood River and 1/2 mile upriver from the east bank.

(11) The Columbia River within a radius of 150 feet of the Spring Creek Hatchery fishway, except that during the period of August 25-September 20 inclusive the closed area is along the Washington side of the

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Columbia River and extends to midstream at right angles to the thread of the Columbia River between a marker located 1-1/2 miles downriver of the Spring Creek Hatchery fishway up to the downstream marker of the Big White Salmon sanctuary located approximately 1/2 mile upriver of the Spring Creek Hatchery fishway.

(12) Herman Creek upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

(13) The Columbia River within an area and adjacent to the mouth of the Klickitat River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1-1/8 miles downstream from the west bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 133, f. & ef. 8-4-77; FWC 149(Temp), f. & ef. 9-21-77 thru 1-18-78; 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 635-035-0045; FWC 6-1980, f. & ef. 1-28-80; FWC 44-1980(Temp), f. & ef. 8-22-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 49-1983(Temp), f. & ef. 9-26-83; FWC 4-1984, f. & ef. 1-31-84; FWC 55-1985(Temp), f. & ef. 9-6-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 25-1986(Temp), f. & ef. 6-25-86; FWC 42-1986, f. & ef. 8-15-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & ef. 3-4-88; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; FWC 80-1990(Temp), f. & cert. ef. 8-8-90; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 23-2011, f. & cert. ef. 3-21-11

635-041-0065

Winter Season

(1) Salmon, steelhead, shad, white sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 12 noon February 1 to 6:00 p.m. March 21.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon between 43-54 inches fork length in The Dalles and John Day pools and white sturgeon between 38-54 inches fork length in the Bonneville Pool may be sold or kept for subsistence use.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. 2-24-10, cert. ef. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. 3-2-10, cert. ef. 3-3-10 thru 4-1-10; Administrative correction 4-21-10; DFW 8-2011(Temp), f. 1-31-11, cert. ef. 2-2-11 thru 4-1-11; DFW 9-2011(Temp), f. 2-9-11, cert. ef. 2-10-11 thru 4-1-11; DFW 23-2011, f. & cert. ef. 3-21-11

635-042-0010

Fishing Gear

(1) As used in these Columbia River fishing rules, gill net includes drift gill net, floater gill net, diver gill net, and is a monofilament or multifilament mesh net with a cork and lead line which is in a position to drift with the tide or current at all times while it is being fished. There must be sufficient buoyancy in the corks and/or floats on the cork line so the net is free to drift with the current. The lead or weight on the lead line of a gill net shall not exceed two pounds in total weight on any one fathom, measurement to be taken along the cork line of the net. However, should extra or added weights appear necessary to operate a net, permission to use in excess of two pounds weight per fathom of net may be granted by the Director upon written application which includes adequate justification for the additional leads or weights.

(2) It is *unlawful*:

(a) For a gill net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished;

(b) To take any species of salmon from the Columbia River for commercial purposes by any means other than by gill net;

(c) To fish more than one gill net from a licensed commercial fishing boat at any one time;

(d) To fish with or have on the boat while fishing a gill net which exceeds 1,500 feet in length;

(e) To fish with or have on the boat while fishing any gill net of a mesh size not authorized for use at that time, except:

(A) During December 1-March 31 when the following applies:

(i) While fishing during open salmon and/or sturgeon seasons, smelt gill nets with a mesh size not more than two inches may be onboard the boat;

(ii) While fishing during open smelt seasons, gill nets with a mesh size greater than two inches may be onboard the boat.

(B) Nets with a minimum mesh size of 9.0 inches may be onboard the boat.

(C) When specifically authorized, nets not lawful for use at that time and area may be onboard the boat if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(f) Fish with or have on the boat while fishing any gill net of a mesh size greater than 9-3/4 inches, except that snagging nets as described in ORS 509.240 are permitted;

(g) Fish with or have on the boat while fishing a gill net which does not meet the construction requirements for a fish net as set forth in section (1) of this rule, except while fishing during the Tongue Point Select Area Salmon Season (OAR 635-042-0170) gill nets with leadline in excess of two pounds per fathom may be stored on the boat.

(3) The mesh size of any gill net is determined only after the meshes are wet from soaking in water not less than one hour. Three consecutive meshes are then placed under ten pounds of vertical tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh.

(4) As used in these rules, "slackers" means a single piece of material or cord, not webbing or mesh, connected vertically or woven in the mesh of the net between the cork and lead lines. It is used to tie netting in a shortened state to give the net surface flexibility.

(5) 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) The use of a "chafing strip panel" attached to the bottom of the net is allowed. A "chafing strip panel" consists of no more than 60 inches of non-mono-filament webbing (such as nylon seine web or polyethylene trawl web) with a maximum mesh size of 3.5 inches. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline.

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 23-1978, f. & ef. 5-4-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0110; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 13-1981, f. & ef. 4-3-81; FWC 6-1982, f. & ef. 1-28-82; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; Administrative correction 9-16-07; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 23-2011, f. & cert. ef. 3-21-11

ADMINISTRATIVE RULES

635-042-0032

Coho Target Fishery

(1) Salmon may be taken in the Columbia River for commercial purposes in all of, or portions of Zones 1–5 (described in OAR 635-042-0001). This is a target fishery for coho; however, chinook may at times be taken.

(2) The open fishing period and areas are determined annually.

(3) Nets are to be hung even with no strings, slackers, trammels, or riplines used to slacken nets. Riplines are allowed providing they do not slacken the net. Maximum mesh size is six inches.

(4) Closed areas are set forth in OAR 635-042-0005 and include the larger (B) sanctuary at Elokom River and the (B) Lewis River sanctuary.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 96-1991, f. & cert. ef. 9-9-91; FWC 101-1991 (Temp), f. & cert. ef. 9-10-91; FWC 102-1991, f. & cert. ef. 9-17-91; Suspended by FWC 92-1992(Temp), f. & cert. ef. 9-16-92; FWC 46-1996, f. & cert. ef. 8-23-96; DFW 71-1999(Temp), f. & cert. ef. 9-20-99 thru 10-22-99; DFW 75-1999(Temp), f. 9-29-99, cert. ef. 9-30-99 thru 10-22-99; DFW 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. 10-26-99, cert. ef. 10-27-99 thru 12-31-99; DFW 62-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 66-2000(Temp), f. 9-29-00, cert. ef. 10-2-00 thru 12-31-00; DFW 68-2000(Temp), f. 10-6-00, cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. 10-20-00, cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 102-2002(Temp), f. & cert. ef. 9-13-02 thru 12-31-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 92-2003(Temp), f. 9-12-03, cert. ef. 9-15-03 thru 12-31-03; Administrative correction, 2-23-05; DFW 23-2011, f. & cert. ef. 3-21-11

635-042-0060

Late Fall Salmon Season

Salmon may be taken for commercial purposes from the Columbia River in the following areas as described in OAR 635-042-0001:

(1) In all of, or portions of Zones 1–5, specific open areas and fishing periods will be determined annually.

(2) There are no mesh size restrictions, except as determined annually.

(3) The status of the sanctuaries as described in OAR 635-042-0005 will be determined annually.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 40-1979, f. & cert. ef. 9-10-79; FWC 45-1979(Temp), f. & cert. ef. 9-21-79; FWC 52-1979(Temp), f. & cert. ef. 11-2-79; FWC 48-1980(Temp), f. & cert. ef. 9-19-80; FWC 51-1980(Temp), f. & cert. ef. 9-22-80; FWC 55-1980(Temp), f. & cert. ef. 9-26-80; FWC 56-1980(Temp), f. & cert. ef. 9-29-80; FWC 58-1980(Temp), f. & cert. ef. 10-17-80; FWC 37-1981(Temp), f. & cert. ef. 9-24-81; FWC 38-1981(Temp), f. & cert. ef. 9-29-81; FWC 69-1982(Temp), f. & cert. ef. 9-30-82; FWC 72-1982(Temp), f. & cert. ef. 10-20-82; FWC 56-1983(Temp), f. & cert. ef. 10-5-83; FWC 54-1984(Temp), f. & cert. ef. 9-10-84; FWC 59-1984(Temp), f. & cert. ef. 9-18-84; FWC 66-1984(Temp), f. & cert. ef. 9-26-84; FWC 68-1984(Temp), f. & cert. ef. 10-2-84; FWC 58-1985(Temp), f. & cert. ef. 9-13-85; FWC 62-1985(Temp), f. & cert. ef. 9-24-85; FWC 66-1985(Temp), f. & cert. ef. 10-11-85; FWC 54-1986(Temp), f. & cert. ef. 9-5-86; FWC 64-1986(Temp), f. & cert. ef. 10-3-86; FWC 67-1986(Temp), f. & cert. ef. 10-17-86; FWC 74-1987(Temp), f. & cert. ef. 9-4-87; FWC 75-1987(Temp), f. & cert. ef. 9-11-87; FWC 80-1987(Temp), f. & cert. ef. 9-18-87; FWC 87-1987(Temp), f. & cert. ef. 10-9-87; FWC 91-1987(Temp), f. & cert. ef. 10-16-87; FWC 85-1988(Temp), f. & cert. ef. 9-9-88; FWC 93-1988(Temp), f. & cert. ef. 9-16-88; FWC 99-1988(Temp), f. & cert. ef. 10-7-88; FWC 100-1988(Temp), f. 10-21-88, cert. ef. 10-24-88; FWC 94-1989(Temp), f. 9-15-89, cert. ef. 9-17-89; FWC 97-1989(Temp), f. & cert. ef. 9-21-89; FWC 109-1989(Temp), f. & cert. ef. 10-6-89; FWC 113-1989(Temp), f. & cert. ef. 11-9-89; FWC 100-1990(Temp), f. & cert. ef. 9-18-90; FWC 101-1990(Temp), f. & cert. ef. 9-19-90; FWC 102-1990(Temp), f. & cert. ef. 9-20-90; FWC 114-1990, f. & cert. ef. 10-8-90; FWC 105-1991, f. & cert. ef. 9-20-91; FWC 118-1991, f. & cert. ef. 10-4-91; FWC 122-1991(Temp), f. & cert. ef. 10-18-91; FWC 129-1991(Temp), f. 11-1-91, cert. ef. 11-3-91; FWC 97-1992(Temp), f. & cert. ef. 9-22-92; FWC 100-1992(Temp), f. 9-25-92, cert. ef. 9-27-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 109-1992(Temp), f. 10-19-92, cert. ef. 10-20-92; FWC 110-1992(Temp), f. & cert. ef. 10-22-92; FWC 80-1995(Temp), f. 9-27-95, cert. ef. 10-9-95; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 58-1996(Temp), f. 9-27-96, cert. ef. 9-30-96; FWC 60-1996(Temp), f. & cert. ef. 10-7-96; FWC 62(Temp), f. 10-18-96, cert. ef. 10-21-96; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; FWC 62-1997(Temp), f. & cert. ef. 10-6-97; FWC 64-1997(Temp), f. & cert. ef. 10-14-97; FWC 65-1997(Temp), f. & cert. ef. 10-20-97; FWC 68-1997(Temp), f. & cert. ef. 11-3-97; DFW 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 83-1999(Temp), f. 10-26-99, cert. ef. 10-27-99 thru 12-31-99; DFW 87-1999(Temp), f. & cert. ef. 11-4-99 thru 11-5-99; Administrative correction 11-17-99; DFW 62-2000(Temp), f. 9-15-00, cert. ef. 9-19-00 thru 12-31-00; DFW 68-2000(Temp), f. 10-6-00, cert. ef. 10-9-00 thru 12-31-00; DFW 71-2000(Temp), f. 10-20-00, cert. ef. 10-23-00 thru 12-31-00; DFW 74-2000(Temp), f. 10-27-00, cert. ef. 10-30-00 thru 12-31-00; Administrative correction 6-20-01; DFW 89-2001(Temp), f. 9-14-01 thru 12-31-01; DFW 92-2001(Temp), f. & cert. ef. 9-19-01 thru 12-31-01; DFW 93-2001(Temp), f. 9-21-01, cert. ef. 9-24-01 thru 12-31-01; DFW 98-2001(Temp), f. 10-8-01, cert. ef. 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 106-2002(Temp), f. & cert. ef. 9-24-02 thru 12-31-02; DFW 109-2002(Temp), f. & cert. ef. 9-27-02 thru 12-31-02; DFW 112-2002(Temp), f. 10-10-02, cert. ef. 10-14-02 thru 12-31-02; DFW 122-2002(Temp), f. 10-24-02, cert. ef. 10-28-02 thru 12-31-02; DFW 92-2003(Temp), f. 9-12-03, cert. ef. 9-15-03 thru 12-31-03; DFW 95-2003(Temp), f. & cert. ef. 9-17-03 thru 12-31-03; DFW 98-2003(Temp), f. 9-22-03, cert. ef. 9-23-03 thru 12-31-03; DFW 105-2003(Temp), f. 10-10-03, cert. ef. 10-12-03 thru 12-31-03; DFW 107-2003(Temp), f. 10-21-03, cert. ef. 10-26-03 thru 12-31-03; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 98-2004(Temp), f. & cert. ef. 9-22-04 thru 12-31-04; DFW 99-2004(Temp), f. & cert. ef. 9-24-04 thru 12-31-04; DFW 101-2004(Temp), f. & cert. ef. 9-29-04 thru 12-31-04; DFW 102-2004(Temp), f. 10-1-04, cert. ef. 10-4-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04;

Administrative correction, 2-18-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 113-2005(Temp), f. & cert. ef. 9-28-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; DFW 126-2005(Temp), f. 10-21-05, cert. ef. 10-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 102-2006(Temp), f. 9-15-06, cert. ef. 9-19-06 thru 12-31-06; DFW 106-2006(Temp), f. 9-22-06, cert. ef. 9-25-06 thru 12-31-06; DFW 111-2006(Temp), f. 9-29-06, cert. ef. 10-2-06 thru 12-31-06; DFW 112-2006(Temp), f. 10-4-06, cert. ef. 10-8-06 thru 12-31-06; DFW 114-2006(Temp), f. & cert. ef. 10-12-06 thru 12-31-06; DFW 120-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 91-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 94-2007(Temp), f. 9-21-07, cert. ef. 9-24-07 thru 12-31-07; DFW 97-2007(Temp), f. 9-25-07, cert. ef. 9-26-07 thru 12-31-07; DFW 98-2007(Temp), f. 9-26-07, cert. ef. 9-27-07 thru 12-31-07; DFW 99-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 104-2007(Temp), f. & cert. ef. 10-3-07 thru 12-31-07; DFW 107-2007(Temp), f. & cert. ef. 10-10-07 thru 12-31-07; DFW 109-2007(Temp), f. 10-16-07, cert. ef. 10-17-07 thru 12-31-07; DFW 111-2007(Temp), f. 10-22-07, cert. ef. 10-23-07 thru 12-31-07; DFW 112-2007(Temp), f. 10-24-07, cert. ef. 10-25-07 thru 12-31-07; DFW 113-2008(Temp), f. 9-17-08, cert. ef. 9-18-08 thru 12-31-08; DFW 119-2008(Temp), f. & cert. ef. 9-24-08 thru 12-31-08; DFW 127-2008(Temp), f. 10-7-08, cert. ef. 10-8-08 thru 12-31-08; DFW 132-2008(Temp), f. 10-14-08, cert. ef. 10-15-08 thru 12-31-08; DFW 136-2008(Temp), f. & cert. ef. 10-21-08 thru 12-31-08; DFW 117-2009(Temp), f. 9-23-09, cert. ef. 9-24-09 thru 10-31-09; DFW 120-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; DFW 122-2009(Temp), f. & cert. ef. 10-5-09 thru 10-31-09; DFW 124-2009(Temp), f. & cert. ef. 10-7-09 thru 10-31-09; DFW 130-2009(Temp), f. & cert. ef. 10-13-09 thru 10-31-09; DFW 134-2009(Temp), f. & cert. ef. 10-20-09 thru 10-31-09; DFW 135-2009(Temp), f. & cert. ef. 10-27-09 thru 10-31-09; Administrative correction 11-19-09; DFW 139-2010(Temp), f. & cert. ef. 10-5-10 thru 10-31-10; DFW 146-2010(Temp), f. 10-13-10, cert. ef. 10-14-10 thru 11-30-10; DFW 150-2010(Temp), f. 10-18-10, cert. ef. 10-19-10 thru 11-30-10; Administrative correction 12-28-10; DFW 23-2011, f. & cert. ef. 3-21-11

635-042-0130

Smelt Season

Smelt may not be taken for commercial purposes from the Columbia River at any time.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & cert. ef. 1-30-85; FWC 79-1986(Temp), f. & cert. ef. 12-22-86; FWC 2-1987, f. & cert. ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 8-2005(Temp), f. & cert. ef. 2-24-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; Administrative correction 8-22-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; Administrative correction 9-16-07; DFW 125-2007(Temp), f. 11-29-07, cert. ef. 12-1-07 thru 5-28-08; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 20-2009, f. & cert. ef. 2-26-09; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 10-2010(Temp), f. 2-4-10, cert. ef. 2-8-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10; Administrative correction 4-21-10; DFW 156-2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 3-31-11; DFW 23-2011, f. & cert. ef. 3-21-11

635-042-0145

Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay.

(a) The open fishing periods are established in three segments categorized as the winter fishery, subsection (1)(a)(A); the spring fishery, subsection (1)(a)(B); and summer fishery, subsection (1)(a)(C), as follows:

(A) Winter Season:

(i) Entire Youngs Bay: Sunday, Tuesday and Thursday from February 13 through March 10 (12 days) starting at 12:00 noon through 6:00 a.m. the following morning (18 hours).

(ii) Upstream of old Youngs Bay Bridge: 2:00 p.m. to 8:00 p.m. Monday, March 14, 2011 (6 hours) and 2:00 p.m. to 8:00 p.m. Wednesday, March 16, 2011 (6 hours).

(B) Spring Season: Entire Youngs Bay: 6:00 p.m. to midnight Monday, April 18, 2011 (6 hours); 6:00 p.m. to midnight Thursday, April 21, 2011 (6 hours); 6:00 p.m. Monday April 25 to noon Tuesday, April 26, 2011 (18 hours); 6:00 p.m. Thursday, April 28 to noon Friday, April 29, 2011 (18 hours); 6:00 p.m. Sunday, May 1 to noon Monday, May 2, 2011 (18 hours); 6:00 p.m. Tuesday, May 3 to noon Wednesday, May 4, 2011 (18 hours); 6:00 p.m. Thursday, May 5 to noon Friday, May 6, 2011 (18 hours); and Mondays at noon through Fridays at noon (4 days), beginning Monday, May 9 through Friday, June 10, 2011 (20 days total).

(C) Summer Season: Entire Youngs Bay: 6:00 a.m. Wednesdays to 6:00 a.m. Fridays (48 hours) beginning Wednesday June 15 through Friday July 29, 2011 (14 fishing days).

(b) The fishing areas for the winter, spring and summer fisheries are:

ADMINISTRATIVE RULES

(A) From February 13 through March 11 and from April 18 through July 29, 2011, the fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(B) On March 14 and 16, 2011, the fishing area extends from the old Youngs Bay Bridge upstream to the upper boundary markers at the confluence of the Youngs and Klaskanine rivers.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season. It is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches during the spring and summer seasons. Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(b) The use of additional weights or anchors attached directly to the leadline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries.

(3) A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified in subsections (1)(a)(A), (1)(a)(B) and (1)(a)(C), the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 32-1979, f. & cert. 8-22-79; FWC 28-1980, f. & cert. 6-23-80; FWC 42-1980(Temp), f. & cert. 8-22-80; FWC 30-1981, f. & cert. 8-14-81; FWC 42-1981(Temp), f. & cert. 11-5-81; FWC 54-1982, f. & cert. 8-17-82; FWC 37-1983, f. & cert. 8-18-83; FWC 61-1983(Temp), f. & cert. 10-19-83; FWC 42-1984, f. & cert. 8-20-84; FWC 39-1985, f. & cert. 8-15-85; FWC 37-1986, f. & cert. 8-11-86; FWC 72-1986(Temp), f. & cert. 10-31-86; FWC 64-1987, f. & cert. 8-7-87; FWC 73-1988, f. & cert. 8-19-88; FWC 55-1989(Temp), f. & cert. 8-7-89; FWC 8-20-89; FWC 82-1990(Temp), f. & cert. 8-14-90; FWC 8-19-90; FWC 86-1991, f. & cert. 8-7-91; FWC 123-1991(Temp), f. & cert. 10-21-91; FWC 30-1992(Temp), f. & cert. 4-27-92; FWC 35-1992(Temp), f. & cert. 5-25-92; FWC 74-1992(Temp), f. & cert. 8-10-92; FWC 8-16-92; FWC 28-1993(Temp), f. & cert. 4-26-93; FWC 48-1993, f. & cert. 8-6-93; FWC 8-9-93; FWC 21-1994(Temp), f. & cert. 4-22-94; FWC 4-25-94; FWC 51-1994, f. & cert. 8-19-94; FWC 8-22-94; FWC 64-1994(Temp), f. & cert. 9-14-94; FWC 9-15-94; FWC 66-1994(Temp), f. & cert. 9-20-94; FWC 27-1995, f. & cert. 3-29-95; FWC 4-1-95; FWC 48-1995(Temp), f. & cert. 6-5-95; FWC 66-1995, f. & cert. 8-22-95; FWC 8-27-95; FWC 69-1995, f. & cert. 8-25-95; FWC 8-19-95; FWC 8-1995, f. & cert. 3-1-96; FWC 37-1996(Temp), f. & cert. 6-11-96; FWC 6-12-96; FWC 41-1996, f. & cert. 8-12-96; FWC 45-1996(Temp), f. & cert. 8-16-96; FWC 8-19-96; FWC 54-1996(Temp), f. & cert. 9-23-96; FWC 4-1997, f. & cert. 1-30-97; FWC 47-1997, f. & cert. 8-15-97; FWC 8-1998(Temp), f. & cert. 2-5-98 thru 2-28-98; FWC 14-1998, f. & cert. 3-3-98; FWC 18-1998(Temp), f. & cert. 3-11-98 thru 3-31-98; FWC 60-1998(Temp), f. & cert. 8-7-98 thru 8-21-98; FWC 67-1998, f. & cert. 8-24-98; FWC 10-1999, f. & cert. 2-26-99; FWC 52-1999(Temp), f. & cert. 8-2-99 thru 8-6-99; FWC 55-1999, f. & cert. 8-12-99; FWC 9-2000, f. & cert. 2-25-00; FWC 42-2000, f. & cert. 8-3-00; FWC 3-2001, f. & cert. 2-6-01; FWC 66-2001(Temp), f. & cert. 8-2-01; FWC 8-6-01 thru 8-14-01; FWC 76-2001(Temp), f. & cert. 8-20-01 thru 10-31-01; FWC 106-2001(Temp), f. & cert. 10-26-01 thru 12-31-01; FWC 15-2002(Temp), f. & cert. 2-20-02 thru 8-18-02; FWC 82-2002(Temp), f. & cert. 8-7-02 thru 9-1-02; FWC 96-2002(Temp), f. & cert. 8-26-02 thru 12-31-02; FWC 12-2003, f. & cert. 2-14-03; FWC 17-2003(Temp), f. & cert. 2-27-03, cert. 3-1-03 thru 8-1-03; FWC 32-2003(Temp), f. & cert. 4-23-03 thru 8-1-03; FWC 34-2003(Temp), f. & cert. 4-24-03 thru 10-1-03; FWC 36-2003(Temp), f. & cert. 4-30-03, cert. 5-1-03 thru 10-1-03; FWC 37-2003(Temp), f. & cert. 5-7-03 thru 10-1-03; FWC 75-2003(Temp), f. & cert. 8-1-03 thru 12-31-03; FWC 89-2003(Temp), f. & cert. 9-9-03 thru 12-31-03; FWC 11-2004, f. & cert. 2-13-04; FWC 19-2004(Temp), f. & cert. 3-12-04 thru 3-31-04; FWC 22-2004(Temp), f. & cert. 3-18-04 thru 3-31-04; FWC 28-2004(Temp), f. & cert. 4-8-04; FWC 4-12-04 thru 4-15-04; FWC 39-2004(Temp), f. & cert. 5-5-04, cert. 5-6-04 thru 7-31-04; FWC 44-2004(Temp), f. & cert. 5-17-04, cert. 5-20-04 thru 7-31-04; FWC 79-2004(Temp), f. & cert. 8-2-04, cert. 8-3-04 thru 12-31-04; FWC 109-2004(Temp), f. & cert. 10-19-04 thru 12-31-04; FWC 6-2005, f. & cert. 2-14-05; FWC 15-2005(Temp), f. & cert. 3-10-05 thru 7-31-05; FWC 18-2005(Temp), f. & cert. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; FWC 27-2005(Temp), f. & cert. 4-20-05 thru 6-15-05; FWC 28-2005(Temp), f. & cert. 4-28-05 thru 6-16-05; FWC 37-2005(Temp), f. & cert. 5-5-05 thru 10-16-05; FWC 40-2005(Temp), f. & cert. 5-10-05 thru 10-16-05; FWC 46-2005(Temp), f. & cert. 5-17-05, cert. 5-18-05 thru 10-16-05; FWC 73-2005(Temp), f. & cert. 7-11-05 thru 7-31-05; FWC 77-2005(Temp), f. & cert. 7-14-05, cert. 7-18-05 thru 7-31-05; FWC 85-2005(Temp), f. & cert. 8-1-05, cert. 8-3-05 thru 12-31-05; FWC 109-2005(Temp), f. & cert. 9-19-05 thru 12-31-05; FWC 110-2005(Temp), f. & cert. 9-26-05 thru 12-31-05; FWC 116-2005(Temp), f. & cert. 10-4-05, cert. 10-5-05 thru 12-31-05; FWC 120-2005(Temp), f. & cert. 10-11-05 thru 12-31-05; FWC 124-2005(Temp), f. & cert. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; FWC 5-2006, f. & cert. 2-15-06; FWC 14-2006(Temp), f. & cert. 3-15-06, cert. 3-16-06 thru 7-27-06; FWC 15-2006(Temp), f. & cert. 3-23-06 thru 7-27-06; FWC 17-2006(Temp), f. & cert. 3-29-06, cert. 3-30-06 thru 7-27-06; FWC 29-2006(Temp), f. & cert. 5-16-06 thru 7-31-06; FWC 32-2006(Temp), f. & cert. 5-23-06 thru 7-31-06; FWC 35-2006(Temp), f. & cert. 5-30-06 thru 7-31-06; FWC 52-2006(Temp), f. & cert. 6-28-06 thru 7-27-06; FWC 73-2006(Temp), f. & cert. 8-1-06, cert. 8-2-06 thru 12-31-06; FWC 103-2006(Temp), f. & cert. 9-15-06, cert. 9-18-06 thru 12-31-06; FWC 119-2006(Temp), f. & cert. 10-18-06 thru 12-

31-06; Administrative correction 1-16-07; FWC 7-2007(Temp), f. 1-31-07, cert. 2-1-07 thru 7-30-07; FWC 9-2007, f. & cert. 2-14-07; FWC 13-2007(Temp), f. & cert. 3-6-07 thru 9-1-07; FWC 16-2007(Temp), f. & cert. 3-14-07 thru 9-9-07; FWC 25-2007(Temp), f. & cert. 4-17-07, cert. 4-18-07 thru 7-26-07; FWC 45-2007(Temp), f. & cert. 6-15-07, cert. 6-25-07 thru 7-31-07; FWC 50-2007(Temp), f. & cert. 6-29-07, cert. 7-4-07 thru 7-31-07; FWC 61-2007(Temp), f. & cert. 7-30-07, cert. 8-1-07 thru 10-31-07; FWC 108-2007(Temp), f. & cert. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; FWC 6-2008(Temp), f. & cert. 1-29-08, cert. 1-31-08 thru 7-28-08; FWC 16-2008(Temp), f. & cert. 2-26-08, cert. 3-2-08 thru 8-28-08; FWC 30-2008(Temp), f. & cert. 3-27-08, cert. 3-30-08 thru 8-28-08; FWC 48-2008(Temp), f. & cert. 5-12-08 thru 8-28-08; FWC 58-2008(Temp), f. & cert. 6-4-08 thru 8-31-08; FWC 85-2008(Temp), f. & cert. 7-24-08, cert. 8-1-08 thru 12-31-08; FWC 108-2008(Temp), f. & cert. 9-8-08, cert. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; FWC 12-2009(Temp), f. & cert. 2-13-09, cert. 2-15-09 thru 7-31-09; FWC 24-2009(Temp), f. & cert. 3-10-09, cert. 3-11-09 thru 7-31-09; FWC 49-2009(Temp), f. & cert. 5-14-09, cert. 5-17-09 thru 7-31-09; FWC 89-2009(Temp), f. & cert. 8-3-09, cert. 8-4-09 thru 12-31-09; FWC 107-2009(Temp), f. & cert. 9-2-09, cert. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; FWC 17-2010(Temp), f. & cert. 2-22-10 thru 7-31-10; FWC 20-2010(Temp), f. & cert. 2-26-10 thru 7-31-10; FWC 30-2010(Temp), f. & cert. 3-11-10, cert. 3-14-10 thru 7-31-10; FWC 35-2010(Temp), f. & cert. 3-23-10, cert. 3-24-10 thru 7-31-10; FWC 40-2010(Temp), f. & cert. 4-1-10 thru 7-31-10; FWC 46-2010(Temp), f. & cert. 4-21-10 thru 7-31-10; FWC 53-2010(Temp), f. & cert. 5-4-10 thru 7-31-10; FWC 57-2010(Temp), f. & cert. 5-11-10 thru 7-31-10; FWC 69-2010(Temp), f. & cert. 5-18-10 thru 7-31-10; FWC 113-2010(Temp), f. & cert. 8-2-10, cert. 8-4-10 thru 10-31-10; FWC 129-2010(Temp), f. & cert. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; FWC 12-2011(Temp), f. & cert. 2-10-11, cert. 2-13-11 thru 7-29-11; FWC 23-2011, f. & cert. 8-31-11

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in subsections (1)(a)(A) and (1)(a)(B) of this rule in those waters of Blind Slough and Knappa Slough. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in subsection (1)(a)(A), and the spring fishery in Blind Slough and Knappa Slough in subsection (1)(a)(B). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only: Sunday and Thursday nights beginning Sunday, February 13 through Sunday, March 13, 2011 (9 nights); Wednesday night March 16, 2011 (1 night); and Sunday nights from March 20 through April 3, 2011 (3 nights).

(B) Blind and Knappa Sloughs: Monday and Thursday nights beginning Monday, April 18 through Thursday, June 9, 2011 (16 nights).

(b) The fishing areas for the winter and spring seasons are:

(A) Blind Slough are those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(B) Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(C) During the period from May 2 through June 10, 2011, the Knappa Slough fishing area extends downstream to the boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(c) Gear restrictions are as follows:

(A) During the winter fishery, outlined above in subsection (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches.

(B) During the spring fishery, outlined above in subsection (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches.

(C) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(2) A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in subsections (1)(a)(A) and (1)(a)(B) the weekly aggregate sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

(3) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

ADMINISTRATIVE RULES

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 103(Temp), f. 8-26-08, cert. ef. 9-2-08 thru 10-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 15-2010(Temp), f. 2-19-10, cert. ef. 2-21-10 thru 6-11-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11

635-042-0170

Tongue Point Basin and South Channel

(1) Tongue Point includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility through navigation marker #6 to Mott Island (new spring lower dead-line), a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island due westerly to a marker on the Oregon shore.

(2) South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy "7" thence to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker "10" thence northwesterly to a marker on Burnside Island defining the terminus of South Channel.

(3) Salmon, shad and white sturgeon may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule. Open fishing periods are:

(a) Spring Season: Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning Monday, April 25 through Thursday, June 9, 2011 (14 nights).

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches. While fishing during the seasons described in this rule, gillnets with lead line in excess of two pounds per fathom may be stored on boats.

(b) In waters described in section (2) as South Channel, nets are restricted to 100 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead

line is permitted. It is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches. While fishing during the seasons described in this rule, gillnets up to 250 fathoms in length may be stored on boats.

(c) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(5) A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in section (3)(a) above, the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

(6) During April 25 through May 20, transportation or possession of fish outside the fishing area is unlawful except while in transit to the ODFW sampling station and until ODFW staff has biologically sampled individual catches. A sampling station will be established near the Tongue Point fishing area. Fishers will be able to confirm the location of the sampling station by calling (503) 428-0518. After sampling, fishers will be issued a transportation permit by agency staff. Beginning May 23, fishers are required to call (503) 428-0518 and leave a message including: name, catch, and where and when the fish will be sold.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006(Temp), f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. & cert. ef. 3-15-06 thru 7-27-06; DFW 16-2006(Temp), f. & cert. ef. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. & cert. ef. 3-29-06 thru 7-27-06; DFW 20-2006(Temp), f. & cert. ef. 4-7-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. & cert. ef. 8-8-06 thru 12-31-06; DFW 92-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. & cert. ef. 9-15-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. & cert. ef. 1-31-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 103(Temp), f. 8-26-08, cert. ef. 9-2-08 thru 10-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 15-2010(Temp), f. 2-19-10, cert. ef. 2-21-10 thru 6-11-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, shad, and white sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open:

(a)(A) Winter season: Sunday and Wednesday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning February 13 through March 20, 2011; Sunday, March 27 from 7:00 p.m. to 7:00 a.m. the following morning (12 hours); and Sunday, April 3, 2011 from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) for 13 nights in all.

(B) From Sunday, March 27 through Monday, April 4, 2011 the authorized fishing area is reduced to extend from the Oneida Road boat ramp (approximately one-half mile up Deep River from navigation marker 16) upstream to the Highway 4 Bridge.

(b) Spring season: Sunday and Wednesday nights from 7:00 p.m. to 7:00 a.m. (12 hours) beginning April 17 through June 8, 2011 (16 nights).

(3) Gear restrictions are as follows:

(a) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

ADMINISTRATIVE RULES

(b) It is *unlawful* to operate in any river, stream or channel any gill net longer than three-fourths the width of the stream. It is *unlawful* in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area. Nets (or parts of nets) not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(c) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(d) During the winter season, outlined above in subsection (2)(a), it is *unlawful* to use a gill net having a mesh size that is less than 7-inches;

(e) During the spring season, outlined above in subsection (2)(b) it is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches.

(4) A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in subsections (2)(a) and (2)(b) above, the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

(5) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. During the winter season, described in subsection (2)(a) above, fishers are required to call (360) 795-0319 for the location and time of sampling. During the spring season, described in subsection (2)(b) above, a sampling station will be established downstream of the Highway 4 Bridge at Stephen's dock.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 23-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 4-30-09; DFW 35-2009(Temp), f. 4-7-09, cert. ef. 4-8-09 thru 4-30-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; DFW 112-2009(Temp), f. 9-11-09, cert. ef. 9-13-09 thru 10-30-09; DFW 121-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; Administrative correction 11-19-09; DFW 16-2010(Temp), f. 2-19-10, cert. ef. 2-22-10 thru 6-10-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11

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Rule Caption: Adopt Federal Rules for Oregon's Sport and Commercial Pacific Halibut Fisheries.

Adm. Order No.: DFW 24-2011

Filed with Sec. of State: 3-22-2011

Certified to be Effective: 3-22-11

Notice Publication Date: 2-1-2011

Rules Amended: 635-004-0005, 635-004-0009, 635-039-0080, 635-039-0085, 635-039-0090

Subject: These amendments to Oregon's sport and commercial Pacific halibut regulations conform to recent federal regulation changes for 2011 which were developed by the International Pacific Halibut Commission (IPHC) and implemented by the National Marine Fisheries Service (NMFS). Housekeeping and technical corrections to the regulations were made to ensure rule consistency.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0005

Scope of Rules

(1) The Pacific halibut commercial fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 004 incorporates into Oregon Administrative Rules, by reference:

(a) **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (October 1, 2010 ed.) as amended; and

(b) **Federal Register Vol. 76, No. 51**, dated March 16, 2011 (76 FR 14300).

(2) Therefore, persons must consult all publications referenced in this rule in addition to Division 004 to determine all rules applicable to halibut fishing requirements.

(3) It is *unlawful* to take halibut for commercial purposes except as set by Federal Regulations and the IPHC and in accordance with a valid permit issued by the IPHC.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0725, Renumbered from 635-036-0330; FWC 25-1989(Temp), f. & cert. ef. 4-5-89; FWC 51-1989, f. & cert. ef. 7-28-89; FWC 32-1990(Temp), f. & cert. ef. 4-4-90; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 29-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; Suspended by DFW 72-2005(Temp), f. & cert. ef. 7-7-05 thru 10-27-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 24-2011, f. & cert. ef. 3-22-11

635-004-0009

Halibut Seasons

(1) The Pacific halibut commercial seasons in Oregon are regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 004 incorporates into Oregon Administrative Rules, by reference:

(a) **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (October 1, 2010 ed.) as amended; and

(b) **Federal Register Vol. 76, No. 51**, dated March 16, 2011 (76 FR 14300).

(2) Therefore, persons must consult all publications referenced in this rule in addition to division 004 rules to determine applicable halibut fishing seasons.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162, & 506.129

Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 24-2011, f. & cert. ef. 3-22-11

635-039-0080

Purpose and Scope

(1) The purpose of division 39 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 39 incorporates into Oregon Administrative Rules, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2011 Oregon Sport Fishing Regulations**;

(b) **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (October 1, 2010 ed.), as amended;

(c) **Title 50 of the Code of Federal Regulations, Part 300, Subpart G** (October 1, 2010 ed.), as amended;

(d) **Federal Register Vol. 74 No. 43**, March 6, 2009 (FR 74 9874); and

(e) **Federal Register Vol. 76, No. 51**, dated March 16, 2011 (76 FR 14300).

ADMINISTRATIVE RULES

(3) Therefore, persons must consult all publications referenced in this rule in addition to division 11 and division 39 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

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

Stat. Auth.: ORS 496.138, 496.146, 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11

635-039-0085

Halibut Seasons

(1) The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 39 incorporates into Oregon Administrative Rules, by reference:

(a) **Title 50 of the Code of Federal Regulations, Part 300, Subpart E** (October 1, 2010 ed.), as amended; and

(b) **Federal Register Vol. 76, No. 51**, dated March 16, 2011 (76 FR 14300).

(2) Therefore, persons must consult all publications referenced in this rule in addition to division 39 to determine applicable halibut fishing seasons.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07; DFW 87-2007(Temp), f. 9-10-07, cert. ef. 9-14-07 thru 10-28-07; DFW 90-2007(Temp), f. 9-19-07, cert. ef. 9-20-07 thru 10-31-07; Administrative correction 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08; DFW 81-2008(Temp), f. 7-11-08, cert. ef. 8-2-08 thru 9-30-08; DFW 92-2008(Temp), f. & cert. ef. 8-11-08 thru 9-30-08; DFW 101-2008(Temp), f. 8-25-08, cert. ef. 8-29-08 thru 9-30-08; DFW 107-2008(Temp), f. 9-5-08, cert. ef. 9-7-08 thru 12-31-08; DFW 111-2008(Temp), f. & cert. ef. 9-16-08 thru 12-31-08; DFW 120-2008(Temp), f. 9-25-08, cert. ef. 9-27-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 55-2009(Temp), f. & cert. ef. 5-22-09 thru 8-6-09; DFW 94-2009(Temp), f. 8-14-09, cert. ef. 8-16-09 thru 12-31-09; Administrative correction 1-25-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 100-2010(Temp), f. 7-15-10, cert. ef. 7-17-10 thru 10-31-10; DFW 118-2010(Temp), f. & cert. ef. 8-13-10 thru 10-31-10; Administrative correction 11-23-10; DFW 24-2011, f. & cert. ef. 3-22-11

635-039-0090

Inclusions and Modifications

(1) The **2011 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2011 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) For 2011, the sport harvest cap for black rockfish is 440.8 metric tons.

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serripes*).

(4) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2011 the sport landing caps are:

(a) Black rockfish and blue rockfish combined, 481.8 metric tons.

(b) Other nearshore rockfish, 13.6 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(5) In addition to the regulations for Marine Fish in the **2011 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2011:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2011 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number), of which no more than one be a cabezon from April 1 through September 30. Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species *except* Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except Pacific cod, sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humburg Mountain. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (5)(a), (5)(b) and (5)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(e) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on **Title 50 Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189**, dated September 29, 2006. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on **Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189**, dated September 29, 2006 may be implemented as the management line as in-season modifications necessitate.

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in **Title 50 Code of Federal Regulations Part 660 Section 70** (October 1, 2010 ed.). Within the YRCA, it is *unlawful* to fish for, take, or retain species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (5)(a), (5)(b) and (5)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (5)(a), (5)(b) and (5)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(6) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

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

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef.

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1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2004, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11

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Rule Caption: 2011 Commercial Spring Chinook Fishery in the Columbia River.

Adm. Order No.: DFW 25-2011(Temp)

Filed with Sec. of State: 3-29-2011

Certified to be Effective: 3-29-11 thru 4-1-11

Notice Publication Date:

Rules Amended: 635-042-0022

Subject: Amended rule allows the non-Indian commercial spring Chinook fishery in the mainstem Columbia River to commence on March 29, 2011 from the mouth of the Columbia River upstream to Kelly Point (Zones 1 thru 4). Modifications are consistent with joint state action taken March 28, 2011 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0022

Spring Chinook Gillnet and Tangle Net Fisheries

(1) Adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken by drift tangle net for commercial purposes from the mouth of the Columbia River upstream to Kelley Point (Zones 1-3 and part of Zone 4) during the following period: Tuesday, March 29, 2011 from 7:30 p.m. to 11:30 p.m. (4 hours).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries. Fishing periods may occur on Tuesdays and Thursdays, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(c) Retention of green sturgeon is prohibited.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring Chinook gillnet fishery:

(a) It is *unlawful* to use a gillnet having a mesh size less than 8 inches or more than 9-3/4 inches.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(4) During the spring Chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4 1/4 inches stretched taut. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Other permanent gear regulations remain in effect.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first

mesh of the net. Red corks at 25 fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in section (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is *unlawful* for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is *unlawful* to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped Chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) Non-adipose fin-clipped salmon and all steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39 1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to the Department and Washington Department of Fish and Wildlife employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

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(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have attended a one-day workshop hosted by the Department or Washington Department of Fish and Wildlife to educate fishers on regulations and best methods for conduct of the fishery.

(15) Nothing in this section sets any precedent for any future spring Chinook fishery. The fact that an individual has attended a live capture training workshop does not entitle the individual to participate in any other fishery. If the Department authorizes a Live Capture fishery in the spring or at any other time, the Department may establish qualifications and requirements that are different from those already established. In particular, the Department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future Live Capture fisheries.

(16) As authorized by OAR-635-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, and Lewis-B sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, ORS 496.146, & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp), f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. 3-2-05, cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05; Administrative correction, 4-20-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 7-2006(Temp), f. & cert. ef. 2-23-06 thru 7-31-06; DFW 9-2006(Temp), f. 3-1-06, cert. ef. 3-2-06 thru 7-31-06; DFW 10-2006(Temp), f. 3-6-06, cert. ef. 3-7-06 thru 7-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; DFW 12-2006(Temp), f. 3-13-06, cert. ef. 3-14-06 thru 7-31-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 30-2006(Temp), f. & cert. ef. 5-18-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 17-2007(Temp), f. & cert. ef. 3-20-07 thru 9-15-07; DFW 19-2007(Temp), f. & cert. ef. 3-22-07 thru 9-17-07; DFW 44-2007(Temp), f. & cert. ef. 6-14-07 thru 9-17-07; Administrative correction 9-18-07; DFW 31-2008(Temp), f. 3-31-08, cert. ef. 4-1-08 thru 9-27-08; DFW 33-2008(Temp), f. 4-7-08, cert. ef. 4-8-08 thru 9-27-08; DFW 34-2008(Temp), f. 4-14-08, cert. ef. 4-15-08 thru 9-27-08; Suspended by DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 10-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 30-2009(Temp), f. 3-23-09, cert. ef. 3-27-09 thru 4-30-09; DFW 34-2009(Temp), f. 4-6-09, cert. ef. 4-7-09 thru 4-30-09; DFW 36-2009(Temp), f. 4-13-09, cert. ef. 4-14-09 thru 4-30-09; Administrative correction 5-20-09; DFW 38-2010(Temp), f. & cert. ef. 3-30-10 thru 4-30-10; DFW 41-2010(Temp), f. 4-6-10, cert. ef. 4-7-10 thru 4-30-10; Administrative correction 5-19-10; DFW 25-2011(Temp), f. & cert. ef. 3-29-11 thru 4-1-11

Rule Caption: John Day Pool Recreational Sturgeon Fishery Closes.

Adm. Order No.: DFW 26-2011(Temp)

Filed with Sec. of State: 4-5-2011

Certified to be Effective: 4-10-11 thru 9-30-11

Notice Publication Date:

Rules Amended: 635-023-0095

Rules Suspended: 635-023-0095(T)

Subject: This amended rule closes the recreational sturgeon season in the John Day Pool of the Columbia River effective April 10, 2011 due to the projected attainment of the harvest guideline. Modifications are consistent with action taken April 4, 2011 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

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, 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 8 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through October 7.

(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 14 through June 26; and

(c) July 1 through July 4 (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 13, from June 27 through June 30, and July 5 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) Effective 12:01 a.m. Saturday, February 19, 2011 the retention of sturgeon in Bonneville Reservoir and tributaries is prohibited.

(10) Effective 12:01 a.m. Sunday April 10, 2011 the retention of sturgeon in the John Day Pool and tributaries is prohibited.

(11) 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.

(12) The retention of white sturgeon in the area identified in section (10) of this rule is prohibited August 1 through January 31.

(13) 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; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-11 thru 7-31-11; DFW

ADMINISTRATIVE RULES

23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11

Rule Caption: Additional Commercial Spring Chinook Fishery in the Columbia River.

Adm. Order No.: DFW 27-2011(Temp)

Filed with Sec. of State: 4-5-2011

Certified to be Effective: 4-6-11 thru 4-10-11

Notice Publication Date:

Rules Amended: 635-042-0022

Subject: Amended rule allows an additional non-Indian commercial spring Chinook fishing period in the mainstem Columbia River to commence on April 6, 2011 from the mouth of the Columbia River upstream to Bonneville Dam (Zones 1 thru 5). Modifications are consistent with joint state action taken April 4, 2011 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0022

Spring Chinook Gillnet and Tangle Net Fisheries

(1) Adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken by drift tangle net for commercial purposes from the mouth of the Columbia River upstream to the upper commercial deadline at Beacon Rock (Zones 1–5) during the following period: Wednesday, April 6, 2011 from 11:00 a.m. to 5:00 p.m. (6 hours).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries. Fishing periods may occur on Tuesdays and Thursdays, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(c) Retention of green sturgeon is prohibited.

(d) A maximum of six adipose fin-clipped Chinook salmon may be possessed or sold by each participating vessel. The first six adult hatchery Chinook must be retained and no additional drifts may be conducted once the Chinook limit has been retained. Only adult Chinook count towards the Chinook landing limit. Adult Chinook are those greater than 24 inches total length.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring Chinook gillnet fishery:

(a) It is *unlawful* to use a gillnet having a mesh size less than 8 inches or more than 9 3/4 inches.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(4) During the spring Chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25 fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the

entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4 1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in section (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is *unlawful* for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is *unlawful* to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, non-retained Chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All non-retained salmon and all steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to the Department and Washington Department of Fish and Wildlife employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have attended a one-day workshop hosted by the Department or Washington Department of Fish and Wildlife to educate fishers on regulations and best methods for conduct of the fishery.

(15) Nothing in this section sets any precedent for any future spring Chinook fishery. The fact that an individual has attended a live capture training workshop does not entitle the individual to participate in any other fishery. If the Department authorizes a Live Capture fishery in the spring or at any other time, the Department may establish qualifications and requirements that are different from those already established. In particular, the Department may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future Live Capture fisheries.

ADMINISTRATIVE RULES

(16) As authorized by OAR-635-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal sanctuaries are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, ORS 496.146, & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp), f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. 3-2-05, cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 7-31-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05; Administrative correction, 4-20-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 7-2006(Temp), f. & cert. ef. 2-23-06 thru 7-31-06; DFW 9-2006(Temp), f. 3-1-06, cert. ef. 3-2-06 thru 7-31-06; DFW 10-2006(Temp), f. 3-6-06, cert. ef. 3-7-06 thru 7-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; DFW 12-2006(Temp), f. 3-13-06, cert. ef. 3-14-06 thru 7-31-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 30-2006(Temp), f. & cert. ef. 5-18-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 17-2007(Temp), f. & cert. ef. 3-20-07 thru 9-15-07; DFW 19-2007(Temp), f. & cert. ef. 3-22-07 thru 9-17-07; DFW 44-2007(Temp), f. & cert. ef. 6-14-07 thru 9-17-07; Administrative correction 9-18-07; DFW 31-2008(Temp), f. 3-31-08, cert. ef. 4-1-08 thru 9-27-08; DFW 33-2008(Temp), f. 4-7-08, cert. ef. 4-8-08 thru 9-27-08; DFW 34-2008(Temp), f. 4-14-08, cert. ef. 4-15-08 thru 9-27-08; Suspended by DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 10-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 30-2009(Temp), f. 3-23-09, cert. ef. 3-27-09 thru 4-30-09; DFW 34-2009(Temp), f. 4-6-09, cert. ef. 4-7-09 thru 4-30-09; DFW 36-2009(Temp), f. 4-13-09, cert. ef. 4-14-09 thru 4-30-09; Administrative correction 5-20-09; DFW 38-2010(Temp), f. & cert. ef. 3-30-10 thru 4-30-10; DFW 41-2010(Temp), f. 4-6-10, cert. ef. 4-7-10 thru 4-30-10; Administrative correction 5-19-10; DFW 25-2011(Temp), f. & cert. ef. 3-29-11 thru 4-1-11; DFW 27-2011(Temp), f. 4-5-11, cert. ef. 4-6-11 thru 4-10-11

Rule Caption: 2011 Columbia River Recreational Spring Chinook Season.

Adm. Order No.: DFW 28-2011(Temp)

Filed with Sec. of State: 4-7-2011

Certified to be Effective: 4-8-11 thru 6-15-11

Notice Publication Date:

Rules Amended: 635-023-0125

Rules Suspended: 635-023-0125(T)

Subject: These rule modifications re-open the 2011 Columbia River spring Chinook season effective Friday, April 8, 2011 with a description of areas, dates, and bag limits for recreational harvest of adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead. Revisions are consistent with action taken April 6, 2011 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0125

Spring Sport Fishery

(1) The 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 February 28 from the mouth at Buoy 10 upstream to the I-5 Bridge with the following restrictions:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead may be retained.

(b) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the 2011 Oregon Sport Fishing Regulations.

(3) The Columbia River is open April 8 through April 15, 2011 from Buoy 10 upstream to Rooster Rock (boat and bank angling); plus bank angling only from Rooster Rock upstream to Bonneville Dam. Legal

boundary for Rooster Rock is defined as “A true North/South line projected from Rooster Rock on the Oregon shore to the Washington shoreline.”

(a) Catch limits of two adult adipose fin-clipped salmonids per day, of which only one may be a Chinook.

(b) From the upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) angling for all species is closed from January 1 through April 30, 2011.

(c) Effective March 1 through June 15, 2011, the daily bag limit in Oregon’s Select Areas may not include more than one adipose fin-clipped Chinook when the recreational fishery in the mainstem Columbia River below Bonneville Dam is open to retention of Chinook.

(4)(a) The Columbia River is open March 16 through April 24, 2011 from the Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to the Oregon/Washington border; plus the Oregon and Washington banks between Bonneville Dam and the Tower Island power lines.

(b) Catch limits of two adult adipose fin-clipped Chinook or steelhead per day; or one of each.

(5) Only adipose fin-clipped fish may be retained. All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(6) Effective March 1 through May 15, 2011, the mainstem Columbia River will be open for retention of adipose fin-clipped steelhead and shad ONLY during days and seasons open for retention of adipose fin-clipped spring Chinook.

(7) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to the Oregon/Washington border 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; DFW 13-2011(Temp), f. & cert. ef. 2-14-11 thru 6-15-11; DFW 28-2011(Temp), f. 4-7-11, cert. ef. 4-8-11 thru 6-15-11

Rule Caption: Open Spring Chinook Sport Fishery on the Snake River Below Hells Canyon Dam.

Adm. Order No.: DFW 29-2011(Temp)

Filed with Sec. of State: 4-12-2011

Certified to be Effective: 4-23-11 thru 10-19-11

Notice Publication Date:

Rules Amended: 635-023-0134

Subject: Amended rule opens a spring Chinook fishery on the Snake River, from Dug Bar Boat Ramp upstream to the deadline below Hells Canyon Dam, beginning on April 23, 2011 to coincide with the State of Idaho’s regulations for this fishery.

Rules Coordinator: Therese Kucera—(503) 947-6033

ADMINISTRATIVE RULES

635-023-0134

Snake River Fishery

(1) 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**.

(2) Notwithstanding, all other specifications and restrictions as outlined in the **2011 Oregon Sport Fishing Regulations**, the following conditions apply:

(a) The Snake River from Dug Bar boat ramp upstream to the dead-line below Hell's Canyon Dam is open seven (7) days per week, effective Saturday, April 23, 2011 until further notice.

(b) Daily bag limit is four (4) adipose fin-clipped spring Chinook salmon per day, of which no more than two (2) can be adults in excess of 24 inches in length. Anglers must cease fishing for salmon for the day when either four (4) salmon or two (2) adult salmon have been retained, whichever comes first.

(c) Barbless hooks are required.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 42-2010(Temp), f. 4-13-10, cert. ef. 4-24-10 thru 7-31-10; 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; DFW 29-2011(Temp), f. 4-12-11, cert. ef. 4-23-11 thru 10-19-11

Rule Caption: 2011 Columbia River Recreational Spring Chinook Season Extended.

Adm. Order No.: DFW 30-2011(Temp)

Filed with Sec. of State: 4-15-2011

Certified to be Effective: 4-16-11 thru 6-15-11

Notice Publication Date:

Rules Amended: 635-023-0125

Rules Suspended: 635-023-0125(T)

Subject: These rule modifications extend, by four (4) days, the 2011 Columbia River spring Chinook season effective Saturday, April 16, 2011 with a description of areas, dates, and bag limits for recreational harvest of adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead. Revisions are consistent with action taken April 14, 2011 by the Columbia River Compact agencies of Oregon and Washington in cooperation with the Columbia River Treaty Tribes.

Rules Coordinator: Therese Kucera—(503) 947-6033

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 February 28 from the mouth at Buoy 10 upstream to the I-5 Bridge with the following restrictions:

(a) Adipose fin-clipped Chinook salmon and adipose fin-clipped steelhead may be retained.

(b) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day. Catch limits for jacks remain in effect as per the **2011 Oregon Sport Fishing Regulations**.

(3) The Columbia River is open April 8 through April 19, 2011 from Buoy 10 upstream to Rooster Rock (boat and bank angling); plus bank angling only from Rooster Rock upstream to Bonneville Dam. Legal boundary for Rooster Rock is defined as "A true North/South line projected from Rooster Rock on the Oregon shore to the Washington shoreline."

(a) Catch limits of two adult adipose fin-clipped salmonids per day, of which only one may be a Chinook.

(b) From the upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) angling for all species is closed from January 1 through April 30, 2011.

(c) Effective March 1 through June 15, 2011, the daily bag limit in Oregon's Select Areas may not include more than one adipose fin-clipped Chinook when the recreational fishery in the mainstem Columbia River below Bonneville Dam is open to retention of Chinook.

(4) The Columbia River is open March 16 through April 24, 2011 from the Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to the Oregon/Washington border; plus the Oregon and Washington banks between Bonneville Dam and the Tower Island power lines. Catch limits of two adult adipose fin-clipped Chinook or steelhead per day; or one of each.

(5) Only adipose fin-clipped fish may be retained. All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(6) Effective March 1 through May 15, 2011, the mainstem Columbia River will be open for retention of adipose fin-clipped steelhead and shad **ONLY** during days and seasons open for retention of adipose fin-clipped spring Chinook.

(7) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to the Oregon/Washington border 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; DFW 13-2011(Temp), f. & cert. ef. 2-14-11 thru 6-15-11; DFW 28-2011(Temp), f. 4-7-11, cert. ef. 4-8-11 thru 6-15-11; DFW 30-2011(Temp), f. 4-15-11, cert. ef. 4-16-11 thru 6-15-11

Department of Human Services, Administrative Services Division and Director's Office Chapter 407

Rule Caption: Addition of Potentially Disqualifying Abuse to Background Checks for DHS and OHA Providers.

Adm. Order No.: DHSD 1-2011(Temp)

Filed with Sec. of State: 4-15-2011

Certified to be Effective: 4-15-11 thru 10-11-11

Notice Publication Date:

Rules Amended: 407-007-0200, 407-007-0210, 407-007-0220, 407-007-0230, 407-007-0240, 407-007-0250, 407-007-0290, 407-007-0300, 407-007-0315, 407-007-0320, 407-007-0325, 407-007-0330, 407-007-0340, 407-007-0350

Subject: The Department of Human Services and the Oregon Health Authority are implementing ORS 409.027 which allows for the use of abuse investigations in determining a subject individual's fitness to provide care to vulnerable individuals. The use of certain abuse investigations where a subject individual is found to be responsible

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for the abuse as a potentially disqualifying condition shall be included in the background check process handled by the Background Check Unit. If a subject individual has potentially disqualifying abuse, only the Background Check Unit may make a final fitness determination.

Amendments to these rules also correct grammatical and stylistic errors, and clarify current processes. In addition, ORS 183.459 allowing the use of union representatives in contested case hearings for homecare workers is implemented.

Proposed rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>.

For hardcopy requests, call: (503) 947-5250.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0200

Purpose

(1) The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to provide for the reasonable screening under ORS 181.534, 181.537, and 409.027 of subject individuals to determine if they have a history of criminal or abusive behavior such that they should not be allowed to work, volunteer, be employed, reside, or otherwise perform in positions covered by these rules.

(2) These rules apply to evaluating criminal records and potentially disqualifying conditions of a subject individual when conducting fitness determinations based upon such information. The fact that a subject individual is approved does not guarantee employment or placement. These rules do not apply to individuals subject to OAR 407-007-0000 to 407-007-0100.

(3) Providers for the Department of Human Services (Department) and the Oregon Health Authority (Authority) are subject to background and abuse checks. The Authority authorizes the Department to act on its behalf in carrying out background and abuse checks associated with the administration of programs or activities administered by the Authority. References in these rules to the Department or the Authority shall be construed to be references to either or both agencies.

Stat. Auth.: ORS 181.534, 181.537, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 411.122, 418.016, 418.640, 441.055, 443.730, 443.735 & 678.153

Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.025, 409.027, 411.060, 411.122 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; Renumbered from 410-007-0200, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0210

Definitions

As used in OAR 407-007-0200 to 407-007-0370, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Abuse" has the meaning given in the administrative rules promulgated by the Department of Human Services (Department) or Oregon Health Authority (Authority) corresponding to the setting in which the abuse was alleged or investigated.

(2) "Abuse check" means obtaining and reviewing abuse allegations, abuse investigation reports, and associated exhibits and documents for the purpose of determining whether a subject individual has a history as a perpetrator of potentially disqualifying abuse (a potentially disqualifying condition) as described in OAR 407-007-0290(11).

(3) "Abuse investigation report" means a written report completed after an investigation into suspected abuse and retained by the Department or the Authority pursuant to ORS 124.085, 419B.030, or 430.757, or a similar report filed in another state agency or by another state.

(4) "Appointing authority" means the individual designated by the qualified entity responsible for appointing authorized designees and contact persons. Examples include but are not limited to human resources staff with the authority to offer and terminate employment, business owners, a member of the board of directors, a director, or a program administrator.

(5) "Approved" means, with regard to a fitness determination, that a subject individual, following a final fitness determination, is fit to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form.

(6) "Approved with restrictions" means an approval in which some restriction is made including but not limited to the subject individual, the subject individual's environment, the type or number of clients for whom the subject individual may provide care, or the information to which the subject individual has access.

(7) "Authority" means the Oregon Health Authority.

(8) "Authorized designee (AD)" means an individual designated by the Department, the Authority, or an approved qualified entity authorized by the Department or Authority to receive and process criminal records check request forms from subject individuals and criminal records information from the Background Check Unit. Only ADs employed by the Department or the Authority are authorized to receive abuse investigation reports, associated exhibits or documents from the Department or the Authority.

(9) "Background check" means an abuse check and a criminal records check under these rules.

(10) "Background Check Unit (BCU)" means the Background Check Unit, performing background checks for the Department.

(11) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation, or support to children, the elderly, or individuals with disabilities (see ORS 181.537).

(12) "Children, Adults and Families Division (CAF)" means the Department of Human Services, Children, Adults and Families Division.

(13) "Client" means any individual who receives services, care, or funding for care through the Department or the Authority.

(14) "Closed case" means a background check application that has been closed without a final fitness determination.

(15) "Contact person (CP)" means an individual who is designated by the Department, the Authority, or an approved qualified entity to receive and process criminal records check request forms from subject individuals, but who is not authorized to receive criminal records information or abuse investigation reports, associated exhibits or documents.

(16) "Criminal records check" means obtaining and reviewing criminal records as required by these rules and includes any or all of the following:

(a) An Oregon criminal records check where criminal offender information is obtained from the Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of other criminal records information.

(b) A national criminal records check where records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information. The national criminal records check may also include a review of other criminal records information.

(c) A state-specific criminal records check where records are obtained from law enforcement agencies, courts, or other criminal records information resources located in, or regarding, a state or jurisdiction outside Oregon.

(17) "Criminal offender information" means records, including fingerprints and photographs, received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders and maintained as part of an individual's records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release, but does not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities. It also includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(18) "Denied" means, with regard to a fitness determination, that a subject individual

(a) Following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, reside, or otherwise hold the position listed on the Background Check Request form.

(b) If determined to be a subject individual under OAR 407-007-0275, is not eligible to hold the position at or through the qualified entity listed on the Background Check Request form due to a conviction for one or more crimes listed in OAR 407-007-0275.

(19) "Department" means the Department of Human Services.

(20) "Fitness determination" means the decision in a case that is not closed, and includes:

(a) The decision regarding a Background Check Request form and preliminary review (a preliminary fitness determination); or

(b) The decision regarding a Background Check Request form, completed background check, including gathering other information as necessary, and a final review by an AD (a final fitness determination).

(21) "Founded or substantiated" has the meanings given in the Department's administrative rules corresponding to the setting in which the abuse was alleged or investigated.

(22) "Good cause" means a valid and sufficient reason for not complying with time frames set during the background check process or contested case hearing process that includes but is not limited to an explanation of circumstances beyond a subject individual's reasonable control.

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(23) "Hearing representative" means a Department employee representing the Department in a contested case hearing.

(24) "Hired on a preliminary basis" means a condition in which a qualified entity allows a subject individual to work, volunteer, be trained, or reside in an environment following the submission of a completed Background Check Request form. Hired on a preliminary basis may also be called probationary status.

(25) "Office of Investigation and Training (OIT)" means the Office of Investigation and Training of the Department.

(26) "Other criminal records information" means information obtained and used in the criminal records check process that is not criminal offender information from OSP. Other criminal records information includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the Background Check Request forms, disclosures by a subject individual, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(27) "Position" means the position listed on the Background Check Request form which determines whether the individual is a subject individual under these or Department program rules.

(28) "Qualified entity (QE)" means a community mental health or developmental disability program, local health department, or an individual, business, or organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care, including a business or organization that licenses, certifies, or registers others to provide care (see ORS 181.537).

(29) "Subject individual (SI)" means an individual on whom the Department may conduct an abuse check and a criminal records check, and from whom the Department may require fingerprints for the purpose of conducting a national criminal records check.

(a) An SI includes any of the following:

(A) An individual who is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department and who provides care.

(B) An employee, contractor, temporary worker, or volunteer who provides care, or has access to clients, client information, or client funds, within any entity or agency licensed, certified, registered, or otherwise regulated by the Department.

(C) Any individual who is paid directly or indirectly with public funds who has or will have contact with recipients of:

(i) Services within an adult foster home (defined in ORS 443.705);

(ii) Services within a residential facility (defined in ORS 443.400);

(iii) Services through in-home care agencies (defined on ORS 443.305); or

(iv) Services through home health agencies (defined in ORS 443.005).

(D) Any direct care staff secured by any residential care facility, assisted living facility, or nursing facility through the services of a personnel services or staffing agency who works in the facility.

(E) Except as excluded in section (21)(b)(C) and (D) of this rule, an individual who lives in a facility that is licensed, certified, registered, or otherwise regulated by the Department to provide care. The position of this SI includes but is not limited to resident manager, household member, or boarder.

(F) An individual working or volunteering for a private licensed child caring agency or system of care contractor providing child welfare services pursuant to ORS Chapter 418.

(G) A homecare worker as defined in ORS 410.600, personal care services provider, or an independent provider employed by a Department client who provides care to the client if the Department helps pay for the services.

(H) A child care provider and their employees reimbursed through the Department's child care program and other individuals in child care facilities that are exempt from certification or registration by the Child Care Division of the Oregon Employment Department (OED). This includes all individuals who reside in or who are frequent visitors to the residence or facility where the child care services are provided and who may have unsupervised access to the children (see OAR 461-165-0180).

(I) An AD or CP in any entity or agency licensed, certified, registered, otherwise regulated by the Department, or subject to these rules.

(J) An individual providing on the job certified nursing assistant classes to staff within a long term care facility.

(K) A student at a long term care facility enrolled in a certified nursing assistant class for employment at the facility.

(L) Any individual serving as an owner, operator, or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(M) Any individual who is required to complete a criminal records check pursuant to other Department program rules or a contract with the Department or if the requirement is within Department's statutory authority. Specific statutory authority or reference to these rules and the positions under the contract subject to a criminal records check must be specified in the contract. This inclusion as a subject individual would not be negated by section (21)(b) of this rule.

(b) An SI does not include:

(A) Any individual under 16 years of age.

(B) An individual receiving training in a Department-licensed or Department-certified facility as part of the required curriculum through any college, university, or other training program and who is not an employee in the facility in which training is provided. The individual may not be considered a volunteer under these rules. Facilities must ensure that all students or interns have passed a substantially equivalent background check process through the training program or are:

(i) Actively supervised at all times as defined in OAR 407-007-0315; and

(ii) Not allowed to have unsupervised access to vulnerable individuals.

(C) Department clients or QE clients, unless specific written permission to conduct a criminal records check is received from the Department. The only circumstance in which the Department shall allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in sections (21)(a)(A)-(D) and 21(a)(F)-(M) of this rule.

(D) Individuals working in child care facilities certified or registered by the OED.

(E) Individuals employed by a private business that provides services to clients and the general public and is not regulated by the Department.

(F) Individuals employed by a business that provides appliance or structural repair for clients and the general public, and who are temporarily providing these services in an environment regulated by the Department. The QE shall ensure active supervision of these individuals while on QE property and the QE may not allow unsupervised contact with QE clients or residents. This exclusion does not apply to a business that receives funds from the Department for care provided by an employee of the business.

(G) Individuals employed by a private business in which a client of the Department is working as part of a Department-sponsored employment service program. This exclusion does not apply to an employee of a business that receives funds from the Department for care provided by the employee.

(H) Employees and volunteers working in hospitals, ambulatory surgical centers, special inpatient care facilities, outpatient renal dialysis facilities, and freestanding birthing centers as defined in ORS 442.015.

(I) Volunteers, who are not under the direction and control of any entity licensed, certified, registered, or otherwise regulated by the Department.

(J) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(K) Individuals working in restaurants or at public swimming pools.

(L) Hemodialysis technicians.

(M) Employees, contractors, temporary workers, or volunteers who provide care, or have access to clients, client information, or client funds of an alcohol and drug program that is certified, licensed, or approved by the Department's Addictions and Mental Health Division to provide prevention, evaluation, or treatment services. This exclusion does not apply to programs specifically required by other Department rules to conduct criminal records checks in accordance with these rules.

(N) Individuals working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(O) Individuals being certified by the Department as interpreters pursuant to ORS 409.623. This exclusion does not apply to Department-certified interpreters when being considered for a specific position.

(P) Provider group categories that were authorized for payment by the Department for care if the provider group categories were not covered by a Department criminal record check process prior to 2004.

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(Q) Emergency medical technicians and first responders certified by the Department's Emergency Medical Services and Trauma Systems program.

(R) Employees, contractors, temporary workers, or volunteers of continuing care retirement communities registered under OAR chapter 411, division 067.

(30) "Weighing test" means a process in which one or more ADs consider available information to make a fitness determination when an SI has potentially disqualifying convictions or conditions.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 8-2010(Temp), f. & cert. ef. 8-12-10 thru 2-7-11; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0220

Background Check Required

(1) The Department or a Department authorized QE shall conduct criminal records checks on all SIs through LEDS maintained by OSP in accordance with ORS chapter 181 and the rules adopted thereto (see OAR chapter 257, division 15).

(2) If a national criminal records check of an SI is necessary, OSP shall provide the Department the results of national criminal records checks conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(3) The Department shall conduct abuse checks on all SIs using available abuse investigation reports and associated documents.

(4) An SI is required to have a background check in the following circumstances:

(a) An individual who becomes an SI on or after the effective date of these rules.

(b) The SI changes employers to a different QE.

(c) Except as provided in section (5) of this rule, the individual, whether previously considered an SI or not, changes positions under the same QE, and the new position requires a background check.

(d) The individual, whether previously considered an SI or not, changes Department-issued licenses, certifications, or registrations, and the license, certification, or registration requires a background check under these rules.

(e) A background check is required by federal or state laws or regulations, other Department administrative rules, or by contract with the Department.

(f) When the Department or the AD has reason to believe that a background check is justified. Examples include but are not limited to any indication of possible criminal or abusive behavior by an SI or quality assurance monitoring of a previously conducted criminal records check or abuse check.

(5) A background check is not required under the following circumstances:

(a) A personal care services provider, Lifespan Respite care provider, or an independent provider paid with Department funds who changes or adds clients, and the prior, documented criminal records check or abuse check conducted within the previous 24 months through the Department has been approved without restrictions.

(b) The SI is a child care provider as described in OAR 461-165-0180 who has been approved without restrictions and who changes or adds clients.

(c) The SI remains with a QE in the same position listed on the Background Check Request Form while the QE merges with another QE, is sold to another QE, or changes names. The changes may be noted in documentation attached to the notice of fitness determination but do not warrant a background check.

(6) An AD must document in writing the reason why a new background check was not completed.

(7) Background checks are completed on SIs who otherwise meet the qualifications of the position listed on the Background Check Request Form. A background check may not be used to screen applicants for a position.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0220, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f.

12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0230

Qualified Entity

(1) A QE and its appointing authorities must be approved in writing by the Department pursuant to these rules in order to appoint an AD or CP. Unless specifically indicated otherwise in these rules, all QEs and appointing authorities discussed in these rules are considered approved.

(2) Except as provided in section (3) of this rule, all QEs shall ensure the completion of background checks for SIs who are the QE's employees, volunteers, or other SIs under the direction or control of the QE.

(a) The QE's appointing authority shall appoint ADs or CPs within 30 calendar days following Department approval, or within time frames required by Department program offices.

(b) Unless specifically allowed by the Department, an appointing authority may not appoint themselves as an AD.

(c) Appointing authorities in all QEs shall appoint one or more ADs, or have a written agreement with another QE to handle AD responsibilities.

(d) Appointing authorities in all QEs may also appoint one or more CPs, or may have a written agreement with another QE to perform CP responsibilities.

(3) The Department's appointing authorities shall appoint ADs and CPs within the Department. Department-employed ADs shall make fitness determinations for the following QEs:

(a) Private QEs with fewer than 10 employed SIs are not eligible to appoint ADs. These QEs shall do one of the following:

(A) Use another QE to perform AD responsibilities instead of using the Department. If another QE is used, the two QEs must have a written agreement. The QE must provide the Department with a copy of the agreement.

(B) Appoint one or more CPs, or have a written agreement with another QE to perform CP responsibilities. The QE must provide the Department with a copy of the agreement.

(b) QEs with SIs not under the direction and control of the QE but who provide care under programs administered by the QE may have the Department ADs make fitness determinations.

(A) The QE shall appoint one or more CPs, or use an AD or CP appointed under section (2) of this rule to perform CP responsibilities.

(B) The QE may appoint an AD for SIs not under the direction and control of the QE if the QE chooses to do so or is required to do so under other Department program rules or contract with the Department. The QE shall notify the Department in writing which programs are affected and which AD shall perform the responsibilities for each program.

(c) QEs may have specific direction by administrative rule or Department program about AD or CP appointments.

(A) Administrative rules governing certain QEs may prohibit AD appointment or CP appointment, such as private licensed child caring agencies.

(B) Department program offices may determine that:

(i) Certain QEs may not have their own ADs or CPs, but must use ADs or CPs at a local Department branch or a local QE. Examples include but are not limited to adult foster homes and child foster homes.

(ii) Specific QEs may have specific AD or CP requirements resulting from licensing actions, sanctions, or from quality assurance monitoring.

(d) The Department may require certain QEs to use Department-employed ADs to make fitness determinations. Examples include but are not limited to initial opening of a new QE, newly adopted administrative rules creating a new type of QE, or Department investigation or review of the QE.

(4) The Department may revoke approval of the QE to appoint or maintain ADs if the Department is investigating a compliance issue or determines that the QE, or an AD or CP appointed by the QE, has failed to comply with these rules. The BCU and the appropriate entity or program office within the Department may develop a plan of action to resolve the compliance issues.

(5) The QE's appointing authorities shall appoint ADs and CPs as needed to remain in compliance with these rules. If a QE no longer has an AD or CP for any reason, the appointing authorities shall ensure that new ADs or CPs are appointed within 30 calendar days from the date of no longer having ADs or CPs, and shall communicate any changes to the BCU.

(6) The Department shall provide QEs with periodic training and ongoing technical assistance.

(7) Any decisions made by the Department in regard to these rules are final and may not be overturned by any QE, its ADs or CPs.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

ADMINISTRATIVE RULES

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0230, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0240

Authorized Designees and Contact Persons

(1) All requirements in this section must be completed within 90 calendar days. To receive Department approval, all ADs and CPs must meet the following requirements:

(a) ADs and CPs for the Department must be employed by the Department. For QEs, the ADs and CPs must be one of the following:

(A) Employed by the agency for which they will handle criminal records check information.

(B) Contracted with the QE to perform as an AD or CP.

(C) Employed by another similar QE or a parent QE (e.g., assisted living facility AD helping another assisted living facility).

(b) ADs and CPs shall complete a certification program and successfully pass any testing as required by the Department.

(c) An appointing authority shall appoint an AD or CP in writing on a form provided by the Department. The applicant AD or CP shall complete and submit the form to the Department for processing and registration.

(d) The Department shall conduct an abuse check, an Oregon criminal records check, a national criminal records check, and if necessary, a state-specific criminal records check. The AD or CP must have:

(A) No conviction for a potentially disqualifying permanent review crime;

(B) No convictions for any other crime in the past 15 years;

(C) No potentially disqualifying conditions; and

(D) If an AD, Criminal Justice Information Systems (CJIS) clearance and approval to view criminal records in accordance with OSP rules.

(E) With consideration of OAR 407-007-0290(11), no determination that the AD or CP was found responsible for potentially disqualifying abuse of a vulnerable person.

(2) The Department shall deny the individual's status as an AD or CP if the individual does not meet the AD or CP requirements. Once denied, the individual may no longer perform the duties of an AD or CP. There are no exceptions for individuals who do not meet the AD or CP requirements.

(3) Approved ADs and CPs shall have the following responsibilities:

(a) Demonstrate understanding of and adherence to these rules in all actions pertaining to the background check process.

(b) Act as the Department's designee in any action pursuant to these rules and the background check process. The AD or CP may not advocate for an SI during any part of the background check process, including contesting a fitness determination.

(c) Ensure that adequate measures are taken to protect the confidentiality of the records and documents required by these rules. Only an AD may view criminal offender information. A CP may not view criminal offender information. The AD and CP may not view abuse investigation reports and associated abuse investigation exhibits or documents as part of the background check process.

(d) Verify the identity of an SI. The AD or CP shall verify identity or ensure that the same verification requirements are understood by each individual responsible for verifying identity.

(A) If conducting a background check on the SI for the first time or at rehire of the SI, the AD or CP shall verify identity by using methods which include but are not limited to asking the SI for current and valid government-issued photo identification and confirming the information on the photo identification with the SI, the information written on the Background Check Request form, and the information written on the fingerprint card if a national criminal records check is conducted.

(B) If an AD or CP is verifying the identity of an SI who is being rechecked, review of government-issued photo identification may not be necessary, but the AD or CP shall verify the SI's name, current address, and any aliases or previous names.

(e) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise hold any position covered by these rules before the completion of a preliminary fitness determination and submission of the Background Check Request form to the Department along with a fingerprint card if the SI discloses out of state criminal records or residency.

(f) Ensure that when an SI is hired on a preliminary basis, the need for active supervision is understood by each individual responsible for providing active supervision.

(g) Ensure that if an SI is removed from working on a preliminary basis, the SI is immediately removed from the position and remains removed until the completion of a final fitness determination or unless the BCU reinstates hired on a preliminary basis.

(h) Notify the Department of any changes regarding an SI who still has a background check being processed, including but not limited to address or employment status changes.

(i) Monitor the status of background check applications and investigate any delays in processing.

(j) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.

(k) Notify the BCU immediately if arrested, charged, or convicted of any crime, or if found responsible for abuse by the Department.

(4) A CP may not conduct final fitness determinations. A CP has the following limitations when making preliminary fitness determinations:

(a) The CP may review the SIs completed Background Check Request form to ensure completeness of the form, verify identity, and to determine if the SI has any potentially disqualifying convictions or conditions.

(b) The CP may allow the SI to be hired on a preliminary basis only after the CP has reviewed the Background Check Request form and determined there is no indication that the SI has any potentially disqualifying convictions under OAR 407-007-0280 or conditions under OAR 407-007-0290.

(c) The CP shall not allow an SI who discloses any potentially disqualifying convictions or conditions to work on a preliminary basis.

(d) If the SI discloses potentially disqualifying convictions or conditions, the CP shall forward the Background Check Request form to an AD for preliminary fitness determination, or to the BCU for processing if there is no local AD available.

(5) In addition to the responsibilities listed in section (3) of this rule, the AD shall:

(a) Review the completed Background Check Request form (if not already done so by a CP) and conduct a preliminary fitness determination to determine eligibility for probationary status before forwarding the Background Check Request form to the BCU.

(b) Make a final fitness determination on all SIs when the Department returns their Background Check Request form to the AD for final review. The decision of an AD may not be overruled by an employee, owner, or board member of a QE who is not an AD.

(c) Participate in the appeal process if requested by the Department.

(d) Ensure the confidentiality and integrity of criminal records check documents. After the completion of a background check, ADs not involved with original fitness determinations may not review criminal records check documents to gain information on an SI's criminal history unless a new background check is being conducted. If a review is necessary, the AD must have written approval from the Department prior to reviewing any documents.

(6) An AD may not have access to criminal offender information, other criminal information (except the Background Check Request form), or make a fitness determination if there is a conflict of interest between the AD and the SI.

(a) A conflict of interest includes but is not limited to the following situations:

(A) If the AD is related to the SI. In this context, "related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adopted 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 cousin.

(B) If the AD has a close personal or financial relationship, other than an employee-employer relationship, with the SI.

(b) When there is a conflict of interest and the QE has no other ADs available to conduct the fitness determination, the Department shall complete the fitness determination.

(7) The Department may change AD or CP status in the following circumstances which include but are not limited to:

(a) The Department shall inactivate AD or CP status when the AD or CP position with the QE ends or when the QE terminates the appointment. The QE shall notify the Department immediately upon the end of the position or termination of the appointment.

(b) The Department or QE shall suspend or revoke the appointment if an AD or CP fails to comply with responsibilities or fails to continue to meet the requirements for AD or CP, as applicable. After suspending or revoking the appointment, the QE must immediately notify the BCU in writing. If the Department takes the action, it must immediately notify the QE in writing.

ADMINISTRATIVE RULES

(c) The Department shall revoke AD or CP status if an AD or CP fails to recertify.

(8) Any changes to AD or CP status are not subject to appeal rights unless the denial or termination results in immediate loss of employment or position. ADs or CPs losing employment or position have the same hearing rights as other SIs under these rules. (9) If an AD or CP leaves employment with the QE for any reason, the Department shall inactivate AD or CP status. If the individual finds employment with another QE, a new appointment, application, and registration must be completed.

(10) The Department shall review and recertify appointments of ADs and CPs, up to and including a new application, background check and additional training, under the following circumstances:

(a) Every three years; or

(b) Any time the Department has reason to believe the individual no longer meets the AD or CP requirements including but not limited to indication of criminal or abusive behavior or indication of noncompliance with these rules.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0240, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0250

Background Check Process

(1) A QE and SI shall use the Background Check Request form to request a background check which shall include the following information:

(a) Name and aliases;

(b) Date of birth;

(c) Address and recent residency information;

(d) Driver license or identification card information;

(e) Position the SI is completing the Background Check Request form;

(f) Disclosure of all criminal history;

(A) The SI must disclose all arrests, charges, and convictions regardless of outcome or when the arrests, charges, or convictions occurred.

(B) The disclosed crimes and the dates must reasonably match the SI's criminal offender information and other criminal records information, as determined by the Department.

(g) Disclosure of other information to be considered in the event of a weighing test.

(2) The Background Check Request form shall include the following notices:

(a) A notice regarding disclosure of Social Security number indicating that:

(A) The SI's disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal records check process.

(b) A notice that the SI may be subject to fingerprinting as part of a criminal records check.

(c) A notice that the BCU shall conduct an abuse check on the SI. The SI is not required to disclose any history of potentially disqualifying abuse, but may provide the BCU with mitigating or other information.

(3) The BCU shall review each Background Check Request form received for completeness and timeliness. If the BCU rejects the form, the QE's AD or CP shall immediately remove the SI from the position. If the QE still plans to hire the SI, the QE shall resolve the reasons for rejection and re-submit the form.

(4) Using identifying information submitted on the Department's Background Check Request form, the Department shall conduct an abuse check to determine if the subject individual has potentially disqualifying abuse.

(5) The Department shall conduct an Oregon criminal records check after a completed Background Check Request form is received. Using information submitted on the Background Check Request form, the Department or QE may obtain criminal offender information from LEDS and may request other criminal records information as needed.

(6) The Department and all QEs receiving LEDS information shall handle criminal offender information in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(7) The Department may conduct a fingerprint-based national criminal records check after an Oregon criminal records check has been completed.

(a) A fingerprint-based national criminal records check may be completed under any of the following circumstances:

(A) The SI has been outside Oregon:

(i) For 60 or more consecutive days during the previous 18 months and the SI is a child care provider or other individual included in OAR 461-165-0180.

(ii) For 60 or more consecutive days during the previous five years for all other SIs.

(B) The LEDS check, SI disclosures, or any other criminal records information obtained by the Department indicate there may be criminal records outside of Oregon.

(C) The SI has an out-of-state driver license or out-of-state identification card.

(D) The Department has reason to question the identity or criminal record of the SI.

(E) A fingerprint-based criminal records check is required by federal or state laws or regulations, other Department rules, or by contract with the Department.

(F) The SI is an AD or CP.

(G) The Department has reason to believe that fingerprints are needed to make a final fitness determination.

(b) The Department must receive consent from the parent or guardian to obtain fingerprints from an SI under 18 years of age.

(c) The SI shall complete and submit a fingerprint card when requested by the Department. The Department shall send the request to the QE and the AD or CP shall notify the SI.

(A) The SI shall use a fingerprint card provided by the Department. The Department shall give the SI notice regarding the Social Security number as set forth in OAR 407-007-0250(2)(a).

(B) The SI shall submit the fingerprint card to the BCU within 21 calendar days of the request.

(i) The Department shall close the application, making it a closed case, if the fingerprint card is not received within 21 calendar days. When a case is closed, the SI may not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules, and shall be immediately terminated and removed from the position.

(ii) The Department may extend the time allowed for good cause provided by the SI or QE.

(C) The Department may require new fingerprint cards if previous cards are rejected by OSP or the FBI.

(8) The Department may also conduct a state-specific criminal records check instead of or in addition to a national criminal records check. Reasons for a state-specific criminal records check include but are not limited to:

(a) When the Department has reason to believe that out-of-state criminal records may exist and a national criminal records check may not be accomplished.

(b) When the Department has been unable to complete a national criminal records check due to illegible fingerprints.

(c) When the national criminal records check results show incomplete information about charges or criminal records without final disposition.

(d) When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.

(e) When, based on available information, the Department has reason to believe that a state-specific criminal records check is necessary.

(9) In order to complete a background check and fitness determination, the Department may require additional information from the SI including but not limited to additional criminal, judicial, other background information, or proof of identity.

(10) The Department may conduct a background check in situations of imminent danger.

(a) If the Department determines there is indication of criminal or abusive behavior that could more likely than not pose an immediate risk to vulnerable individuals, the Department shall conduct a new criminal records check on an SI without the completion of a new Background Check Request form.

(b) If the Department determines that a fitness determination based on the new background check would be adverse to the SI, the Department shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0300 before the completion of the fitness determination.

(11) All criminal records checks conducted under this rule shall be documented in writing.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

ADMINISTRATIVE RULES

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0250, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0290

Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

(1) The SI makes a false statement to the QE, AD, or Department, including the provision of materially false information, false information regarding criminal records, or failure to disclose information regarding criminal records. Nondisclosure of violation or infraction charges may not be considered a false statement.

(2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to vulnerable individuals if the SI has been designated a predatory sex offender in any jurisdiction under ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(3) The SI has an outstanding warrant for any crime in any jurisdiction.

(4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program in any jurisdiction for any potentially disqualifying crime.

(5) The SI is currently on probation, parole, or post-prison supervision for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date).

(6) The SI has been found in violation of post-prison supervision, parole, or probation for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date), within five years from the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent danger.

(7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any jurisdiction.

(8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from justice, regardless of the date of arrest.

(9) The SI has an adjudication in a juvenile court in any jurisdiction, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult. Subsequent adverse rulings from a juvenile court, such as probation violations, shall also be considered potentially disqualifying if within five years from the date the Background Check Request form was signed or the date the Department conducted a criminal records check due to imminent danger.

(10) The SI has a finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," "not responsible by reason of mental disease or defect," or similarly worded disposition in any jurisdiction regarding a potentially disqualifying crime, unless the local statutes indicate that such an outcome is considered an acquittal.

(11) Potentially disqualifying abuse as determined from abuse investigation reports which have an outcome of founded, substantiated, or valid and in which the SI is determined to have been responsible for the abuse.

(a) For SIs associated with child foster homes licensed through the Department's Seniors and People with Disabilities Division, child foster homes licensed through a private licensed child caring agency or adoptive families through an private licensed child caring agency, potentially disqualifying abuse includes:

(A) Child protective services history held by the Department regardless of the date of initial report or outcome;

(B) Child protective services history reviewed pursuant to the federal Adam Walsh Act requirements, determined by BCU ADs to be potentially disqualifying; and

(C) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by the Office of Investigation and Training and the Seniors and People with Disabilities Division based on severity.

(b) For staff and volunteers of a private licensed child caring agency:

(A) Child protective services history held by the Department regardless of the date of initial report or outcome; and

(B) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by the Office of Investigation and Training and the Seniors and People with Disabilities Division based on severity.

(c) For child care providers and associated subject individuals defined in OAR 407-007-0210(29)(a)(H);

(A) Child protective services history held by the Department regardless of the date of initial report, date of outcome and considered potential disqualifying pursuant to OAR 461-165-0420; and

(B) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by the Office of Investigation and Training and the Seniors and People with Disabilities Division based on severity.

(d) For all other SIs, potentially disqualifying abuse includes founded or substantiated adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to the BCU by the Office of Investigation and Training and the Seniors and People with Disabilities Division based on severity.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0290, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0300

Weighing Test

When making a fitness determination, the AD shall consider any of the following factors if an SI has potentially disqualifying convictions or conditions as disclosed by the SI or which is otherwise known:

(1) Circumstances regarding the nature of potentially disqualifying convictions and conditions including but not limited to:

(a) The details of incidents leading to the charges of potentially disqualifying convictions or resulting in potentially disqualifying conditions.

(b) Age of the SI at time of the potentially disqualifying convictions or conditions.

(c) Facts that support the convictions or potentially disqualifying conditions.

(d) Passage of time since commission of the potentially disqualifying convictions or conditions.

(e) Consideration of state or federal laws, regulations, or rules covering the position, facility, employer, or QE regarding the potentially disqualifying convictions or conditions.

(2) If applicable, circumstances regarding the nature of potentially disqualifying abuse including but not limited to:

(a) Circumstances leading to the incident of abuse;

(b) The nature and type of abuse; and

(c) Other information gathered during the scope of the abuse investigation.

(d) The date of the abuse incident and abuse investigation, and the age of the SI at the time of the abuse.

(e) The quality of the abuse investigation including, if applicable, any exhibits and related documents with consideration taken into account regarding completeness, objectivity, and sufficiency.

(f) Due process provided to the SI after the abuse investigation.

(g) Required action resulting from the founded or substantiated abuse including but not limited to training, counseling, corrective or disciplinary action, and the SI's compliance.

(3) Other factors when available including but not limited to:

(a) Other information related to criminal activity including charges, arrests, pending indictments, and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history.

(b) Periods of incarceration.

(c) Status of and compliance with parole, post-prison supervision, or probation.

(d) Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions.

(e) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.

(f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior.

(g) Information from the Department's protective services, abuse or other investigations in which the investigator documented behavior or conduct by the SI that would pose a risk to or jeopardize the safety of vulnerable individuals.

(h) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(A) History of high school, college, or other education related accomplishments.

ADMINISTRATIVE RULES

- (B) Work history (employee or volunteer).
- (C) History regarding licensure, certification, or training for licensure or certification.

(D) Written recommendations from current or past employers, including Department client employers.

(i) Indication of the SI's cooperation, honesty, or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.

(4) The AD shall consider the relevancy of the SI's criminal activity or potentially disqualifying conditions to the paid or volunteer position, or to the environment in which the SI will reside, work, or visit.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0300, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0315

Hired on a Preliminary Basis

A preliminary fitness determination is required to determine if an SI may work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form prior to a final fitness determination. The SI may not be hired on a preliminary basis prior to the completion of a preliminary fitness determination.

(1) The SI must complete required information on a Background Check Request form and the AD or CP must review the form.

(2) The AD or CP shall review the Background Check Request form, complete a preliminary fitness determination and shall then make one of the following determinations

(a) An SI may be hired on a preliminary basis, only during the period of time prior to a final fitness determination, into the position listed on the Background Check Request form and be allowed to participate in training, orientation, and position activities under the one of the following circumstances:

(A) If there is no indication of a potentially disqualifying conviction or condition on the Background Check Request form and the AD or CP have no reason to believe the SI has potentially disqualifying history. This is the only situation in which a CP may hire an SI on a preliminary basis.

(B) If the SI discloses any potentially disqualifying convictions or conditions, the SI may be hired on a preliminary basis only after the completion of a weighing test by an AD. The SI may be hired on a preliminary basis only if, based on information available at the time, the AD determines that more likely than not that the SI poses no potential threat to vulnerable individuals.

(b) The QE may not hire a SI on a preliminary basis under any of the following circumstances:

(A) Being hired on a preliminary basis or probationary status is not allowed by program rules.

(B) The SI has disclosed potentially disqualifying convictions or conditions and the QE does not have an AD to make a preliminary fitness determination.

(C) The AD or Department determine that:

(i) More likely than not, the SI poses a potential threat to vulnerable individuals, based on a preliminary fitness determination and weighing test;

(ii) The SI's most recent background check under these rules or other Department criminal records check rules or abuse check rules resulted in a denial; or

(iii) The SI is currently involved in contesting a background check under these or other Department criminal records check rules or abuse check rules.

(D) An outcome of no hiring on a preliminary basis may only be overturned by the Department.

(3) The QE shall forward the Background Check Request form to the Department immediately upon completion of the preliminary fitness determination or, if the QE cannot make a preliminary fitness determination, immediately after the SI's completion of the form and verification of the SI's identity.

(4) The Department shall review the preliminary fitness determination made by the QE.

(a) The Department may change the outcome of the preliminary fitness determination based on available information.

(b) A QE without access to an AD may request the Department make a preliminary fitness determination if the SI discloses potentially disqualifying convictions or conditions.

(5) An SI hired on a preliminary basis shall be actively supervised at all times.

(a) The individual providing active supervision at all times shall do the following:

(A) Be in the same building as the SI or, if outdoors of QE buildings or any location off the QE property, be within line-of-sight and hearing, except as provided in section (5)(b)(B) of this rule;

(B) Know where the SI is and what the SI is doing; and

(C) Periodically observe the actions of the SI.

(b) The individual providing the active supervision may be either:

(A) An SI who has been approved without restrictions pursuant to these rules or previous Department criminal records check rules; or

(B) The adult client, an adult client's adult relation, the client's legal representative, or a child's parent or guardian. Active supervision by these individuals is appropriate in situations where care is given directly to clients usually in a home such as but not limited to in-home care, home health, or care by home care workers, personal care assistants, or child care providers.

(i) The adult client may actively supervise a homecare worker, personal care services provider, independent provider, or an employee of an in-home care agency or home health agency if the client makes an informed decision to employ the provider. Someone related to the client may also provide active supervision if the relative has been approved by the Department, the AD, or the private-pay client receiving services through an in-home care or home health agency.

(ii) A child client's parent or guardian shall be responsible for providing active supervision in the case of child care providers. The supervision is not required to be performed by someone in the same building as the child.

(6) An SI approved without restrictions within the previous 24 months through a documented criminal records check or abuse check pursuant to these rules or prior Department criminal records check rules or abuse check rules may be hired on a preliminary basis without active supervision. Twenty-four months is calculated from date of previous approval to the date of hire in the new position. This exemption from active supervision is not allowed in any of the following situations:

(a) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(b) If there is evidence of criminal activity or potentially disqualifying abuse within the previous 24 months.

(c) If, as determined by the AD or the Department, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(7) Revocation of hired on a preliminary basis is not subject to hearing or appeal. The QE or the Department may immediately revoke hired on a preliminary basis for any of the following reasons:

(a) There is any indication of falsification of application.

(b) The QE or Department determines that allowing the SI to be hired on a preliminary basis is not appropriate, based on the application, criminal record, position duties, or Department program rules.

(8) Nothing in this rule is intended to require that an SI who is eligible to be hired on a preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form prior to a final fitness determination.

(9) Preliminary fitness determinations must be documented in writing, including any details regarding a weighing test, if required.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0320

Final Fitness Determinations

The AD shall make a final fitness determination after all necessary background checks have been received and a weighing test, if necessary, has been completed. The AD may obtain and consider additional information as necessary to complete the final fitness determination.

(1) The final fitness determination results in one of the following outcomes:

(a) The AD may approve an SI if:

(A) The SI has no potentially disqualifying convictions or potentially disqualifying conditions; or

(B) The SI has potentially disqualifying convictions or potentially disqualifying conditions and, after a weighing test, the AD determines that more likely than not that the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals.

ADMINISTRATIVE RULES

(b) The AD may approve an SI with restrictions if the AD determines that more likely than not that the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals, if certain restrictions are placed on the SI. Restrictions may include but are not limited to restrictions to one or more specific clients, job duties, or environments. A new background check and fitness determination shall be completed on the SI before removing a restriction.

(c) The AD shall deny an SI whom the AD determines, after a weighing test, more likely than not poses a risk to the physical, emotional, or financial well-being of vulnerable individuals.

(2) The Department shall make a final fitness determination in the following situations:

(a) A national or state-specific criminal records check has been completed on the SI;

(b) The Department determines that the SI has potentially disqualifying abuse as described in OAR 407-007-0290(11).

(c) If Oregon laws or program administrative rules governing the QE or the position require that the Department makes the final fitness determination;

(d) The SI has the following history regarding criminal records checks or abuse checks:

(A) The SI's most recent criminal records check or abuse check under these rules or other Department rules resulted in a denial; or

(B) The SI's most recent criminal records check or abuse check under these or other Department rules required a weighing test which was completed by the Department.

(e) If, after conducting a criminal records check or abuse check, the Department determines that, based on the presence of a potentially disqualifying crime or condition, there is a potential for imminent danger to vulnerable individuals;

(f) If the QE requests the Department to make the final fitness determination because the QE is temporarily unable to provide an AD to conduct a fitness determination;

(g) Upon request of an AD, the Department may provide technical assistance or make the final fitness determination;

(h) If the Department has reason to believe a final fitness determination has not been conducted in compliance with these rules, the Department may repeat the background check and make a final fitness determination; or

(i) If the QE or AD is under investigation regarding compliance with these rules and the status of all ADs have been suspended during the investigation.

(3) The Department may review final fitness determinations made by local ADs and make a new final fitness determination at its discretion.

(4) Upon completion of a final fitness determination, the Department or AD making the decision shall provide written notice to the SI.

(a) The notice shall be in a Department-approved format.

(b) If approved, the Background Check Request form shall indicate the final fitness determination and the completed Background Check Request form shall be the notice of fitness determination.

(A) If the final fitness determination is completed by the Department, the QE shall ensure that the SI receives a copy of the Background Check Request form after the Department returns the Background Check Request form to the QE.

(B) If the final fitness determination is completed by the local AD, the local AD shall ensure that the SI receives a copy of the Background Check Request form after the AD completes the Background Check Request form.

(c) If denied or approved with restrictions, the notice of fitness determination shall include the potentially disqualifying convictions or conditions that the outcome was based upon, information regarding appeal rights and the notice becoming a final order in the event of a withdrawal or failure to appear at the hearing.

(A) If the final fitness determination is completed by the Department, the Department shall ensure that the SI receives a copy of the notice of fitness determination and the Background Check Request form. The Department shall provide the QE with a copy of the Background Check Request form to the QE with indication of the final fitness determination being either denied or approved with restrictions.

(B) If the final fitness determination is completed by the local AD, the local AD shall ensure that the SI receives a copy of the notice of fitness determination and the Background Check Request form after the AD completes the Background Check Request form.

(d) The notice shall be mailed or hand-delivered to the SI within 14 calendar days after the final fitness determination has been completed. The effective date of action shall be recorded on the notice.

(5) When an SI is denied, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A denial applies only to the position and application in question. A denial shall result in immediate termination, dismissal, or removal of the SI.

(6) When an SI is approved with restrictions, the SI shall only be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form and only under the stated restrictions. A restricted approval applies only to the position and application in question. A restricted approval shall result in immediate implementation of the restrictions.

(7) Final fitness determinations must be documented in writing, including any details including but not limited to the potentially disqualifying convictions or conditions, the factors considered during weighing test, and restrictions in a restricted approval. The authorized designee shall also maintain any documents obtained during the fitness determination, such as written statements and certificates from the subject individual, police reports, or court records.

(8) The Department or AD shall make new fitness determinations for each application. The outcome of previous fitness determinations does not set a precedent for subsequent fitness determinations.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0320, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0325

Closed Case

If the SI discontinues the application or fails to cooperate with the criminal records check or fitness determination process, the application is considered incomplete and may be closed.

(1) Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(a) The SI fails to disclose all criminal history on the Background Check Request form.

(b) The SI refuses to be fingerprinted when required by these rules.

(c) The SI fails to respond within a stated time period to a request for corrections to the application, fingerprints, or any other information necessary to conduct a criminal records check or an abuse check and there is not enough information available to make a fitness determination.

(d) The SI withdraws the application, leaves the position prior to completion of the background check, or the Department cannot locate or contact the subject individual.

(e) The SI is determined to be ineligible for the position for reasons other than the background check.

(2) When the application is closed without a final fitness determination, the SI does not have a right to contest the closure.

(3) When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A closed case applies only to the position in question. A closed case shall result in immediate termination, dismissal, or removal of the SI.

(4) The AD or CP shall document in writing the reasons for a closed case, and shall provide that information to the SI.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0330

Contesting a Fitness Determination

(1) A final fitness determination of denied or restricted approval is considered an adverse outcome. An SI with an adverse outcome may contest that fitness determination.

(2) If an SI is denied, the SI may not hold the position, provide services or be employed, licensed, certified, or registered, or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) An SI may challenge the accuracy or completeness of information provided by the OSP, the FBI, or other agencies reporting information to the Department, by appealing to the entity providing the information. These challenges are not subject to the Department's appeal process.

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(5) An SI has the right to represent him or herself or have legal representation during the appeal process. For the purpose of this rule, the term "SI" shall be considered to include the SI's legal representative.

(a) An SI who is appealing an adverse outcome regarding the position of homecare worker as defined in ORS 410.600 may be represented by a labor union representative pursuant to ORS 183.459.

(b) For all other SIs, the SI may not be represented by a lay person.

(6) An SI may contest an adverse fitness determination by requesting a contested case hearing. The contested case hearing process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing, the SI shall complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Department within 45 calendar days after the effective date of action listed on the notice of the fitness determination.

(c) In the event an appeal is not timely, the Department shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(d) The Department may refer an untimely request to the OAH for a hearing on the issue of timeliness.

(7) The Department may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the BCU within a specified amount of time.

(b) The administrative review is not open to the public.

(8) The Department may conduct additional criminal records checks or abuse checks during the contested case hearing process to update or verify the SI's potentially disqualifying convictions or conditions and factors to consider in the weighing test. If needed, the Department shall amend the notice of fitness determination while still maintaining the original hearing rights and deadlines.

(9) The Department shall be represented by a hearing representative in contested case hearings. The Department may also be represented by Department of Justice Office of the Attorney General.

(a) The Department shall provide the administrative law judge and the SI a complete copy of available information used during the background checks and fitness determinations. The notice of contested case and pre-hearing summary and other documents may be mailed by regular first class mail.

(b) An SI may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

(A) A protective order issued pursuant to this section must be issued by an administrative law judge as provided for in OAR 137-003-0570(8) or by a court of law.

(B) In conjunction with a protective order issued pursuant to this section, individually identifying information relating to clients, witnesses, and other persons identified in abuse investigation reports or other records collected or developed during the abuse check process shall be redacted prior to disclosure, except for the information identifying the SI.

(c) The contested case hearing is not open to the public.

(d) The administrative law judge shall make a new fitness determination based on evidence and the contested case hearing record.

(e) The only remedy an administrative law judge may grant is a fitness determination that the subject individual is approved, approved with restrictions, or denied. Under no circumstances shall the Department or the QE be required to place an SI in any position, nor shall the Department or the QE be required to accept services or enter into a contractual agreement with an SI.

(f) A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the SI.

(10) The notice of fitness determination issued is final as if the SI never requested a hearing in the following situations:

(a) The SI failed to request a hearing in the time allotted in this rule. No other document will be issued after the notice of fitness determination.

(b) The SI withdraws the request for hearing at any time during the appeal process.

(11) The Department may make an informal disposition based on the administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to contested case hearing.

(12) The Department shall issue a dismissal order in the following situations:

(a) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by the Department or the OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

(b) The Department shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days.

(c) The Department shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days of the order.

(13) After a hearing, the administrative law judge shall issue a proposed and final order.

(a) If no written exceptions are received by the Department within 14 calendar days after the service of the proposed and final order, the proposed and final order becomes the final order.

(b) If timely written exceptions to the proposed and final order are received by the Department, the Department's Director or designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(14) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

(15) The Department may provide the QE's AD with the results of the appeal.

Stat. Auth.: ORS 181.537, 183.459, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;

Renumbered from 410-007-0330, DHS D 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHS D 2-

2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHS D 7-2008, f. 8-29-08, cert. ef. 9-1-08;

DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHS D 2-2009, f. & cert. ef. 4-1-09; DHS D 7-

2009, f. & cert. ef. 10-1-09; DHS D 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHS D 10-2010, f.

10-29-10, cert. ef. 10-31-10; DHS D 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0340

Record Keeping, Confidentiality

(1) All LEDS reports are confidential and the AD shall maintain the reports in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(a) LEDS reports are confidential and may only be shared with another AD if there is a need to know consistent with these rules.

(b) The LEDS report and any photocopies may not be shown or given to the SI.

(2) The results of a national criminal records check provided by the FBI or the OSP are confidential and may not be disseminated by the Department unless:

(a) If a fingerprint-based criminal records check was conducted on the SI, the SI shall be provided a copy of the results if requested.

(b) The state and national criminal offender information shall be provided as exhibits during the contested case hearing.

(3) The results of an abuse check are confidential and may not be disseminated by the Department except in compliance with confidentiality statutes and guidelines of the Department. An SI may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information during the contested case hearing process.

(4) All completed Background Check Request forms, other criminal records information, and other records collected or developed during the background check or contested case process shall be kept confidential and disseminated only on a need-to-know basis.

(5) The Department shall retain and destroy all criminal records check documents pursuant to federal law and records retention schedules published by Oregon State Archives.

(6) Documents may be requested and reviewed by the Department and the OSP for the purposes of determining and ensuring compliance with these rules.

ADMINISTRATIVE RULES

(7) Neither local ADs nor the Department may re-create past notices of fitness determinations. If an error is discovered on a notice of fitness determination, the local AD or the Department may correct it by issuing an amended notice of fitness determination.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0340, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

407-007-0350

Immunity from Liability

(1) The Department, QE, AD, or CP, acting within the course and scope of employment, have immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181.537, that an SI is fit or not fit to hold a position, provide services, or be employed, licensed, certified, or registered.

(2) The Department, QE, AD, or CP, acting within the course and scope of employment, and an employer or employer's agent are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the QE's decision if they in good faith comply with:

- (a) ORS 181.537 and ORS 409.027; and
- (b) The decision of the QE or employee of the QE acting within the course and scope of employment.

(3) No employee of the state, a business, or an organization, acting within the course or scope of employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in connection with the lawful dissemination of information lawfully obtained under ORS 181.537.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0350, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 1-2011(Temp), f. & cert. ef. 4-15-11 thru 10-11-11

**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 2-2011(Temp)

Filed with Sec. of State: 3-22-2011

Certified to be Effective: 3-22-11 thru 9-18-11

Notice Publication Date:

Rules Amended: 413-070-0550

Subject: OAR 413-070-0550 about the approval and implementation of an APPLA permanency plan is being amended to clarify the individual who can make a decision on behalf of the Department to change a child's permanency plan to APPLA prior to approaching the court.

Rules Coordinator: Annette Tesch—(503) 945-6067

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.

(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 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
Stats Implemented: ORS 418.005, 419A.004
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; CWP 2-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 3-2011(Temp)

Filed with Sec. of State: 3-22-2011

Certified to be Effective: 3-22-11 thru 9-18-11

Notice Publication Date:

Rules Amended: 413-070-0514, 413-070-0516, 413-070-0518, 413-070-0519

Subject: OAR 413-070-0514 about working with a child's team regarding a permanency plan and concurrent permanency plan is being amended to clarify the individual who can make a decision on behalf of the Department to change a child's permanency plan to APPLA prior to approaching the court. This rule is also being amended to clarify when a caseworker must determine the Department has taken action on potential permanency resources prior to considering a change in the permanency plan.

OAR 413-070-0516 about the use of a permanency committee is being amended to clarify and reference an exception to the process described in these rules to use a permanency committee to make a

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recommendation that a foster parent be considered as a child's potential adoptive resource.

OAR 413-070-0518 about the composition, scheduling, responsibilities, and recommendation of the permanency committee is being amended to modify its description of who is considered a member of the permanency committee and broaden the individuals who may be invited to come and present information to the permanency committee.

OAR 413-070-0519 about the decision of the permanency committee and the notice of that decision is being amended to modify the rule title to better match the content of the rule.

Rules Coordinator: Annette Tesch—(503) 945-6067

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 Department, the child or young adult, the family of child or young adult, or a member of the team of the child or young adult; and the caseworker must review with the team of the child or young adult:

(a) The outcome of the assessment of potential permanency resources; and

(b) The Department's efforts to develop and maintain the relationship of the child or young adult 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) 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 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.

(b) A Child Welfare Program Manager must make the decision on behalf of the Department:

(A) To approve changing the permanency plan to 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 APPLA.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: CWP 27-2010, f. & cert. ef. 12-29-10; CWP 3-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

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 under OAR 413-100-0132. The permanency committee provides a recommendation based upon the considerations in OAR 413-110-0132(2).

(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)(b).

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: CWP 27-2010, f. & cert. ef. 12-29-10; CWP 3-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

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.

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(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; and

(E) A member of the RCWAC, if the child or young adult is a refugee child.

(2) The substitute caregiver of the child or young adult, or 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, may be 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; CWP 3-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

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; CWP 3-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 4-2011(Temp)

Filed with Sec. of State: 3-22-2011

Certified to be Effective: 3-22-11 thru 9-18-11

Notice Publication Date:

Rules Amended: 413-120-0730, 413-120-0750, 413-120-0760

Subject: OAR 413-120-0730 is being amended to clarify the order of preference in identifying potential adoptive resources for a child.

OAR 413-120-0750 is being amended to clarify when an exception can be made for the required recruitment efforts seeking an appropriate adoptive resource for a child.

OAR 413-120-0760 is being amended to clarify the identification of potential adoptive resources for a child. This rule is also being amended to state the considerations and circumstances to grant an exception to the order of preference in the selection of potential adoptive resources.

Rules Coordinator: Annette Tesch—(503) 945-6067

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 identifying 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), or a current caretaker (except when OAR 413-120-0580(2)(b)(B) applies), or both.

(c) A current caretaker and a general applicant, when a determination has been made under OAR 413-120-0580(2)(b)(B).

(d) Except as provided in subsection (c) of this section, 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; CWP 4-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

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;

(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

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(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.

(c) An exception to the order of preference was granted by the Adoption Program Manager under OAR 413-120-0760.

(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; CWP 4-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

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 interest 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 following the order of preference in OAR 413-120-0730 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.

(4) If the caseworker is unable to identify any potential adoptive resources for adoption placement selection in the first order of preference set forth in OAR 413-070-0730(1) who are relatives as defined in OAR 413-120-0710(12)(a)-(c) and meet the criteria in paragraphs (3)(d)(A)-(C) of this rule, the caseworker may identify one to three potential adoptive resources who meet the criterion in paragraphs (3)(d)(A)-(C) of this rule who may include a relative or relatives as defined in OAR 413-120-0710(12)(d) or a current caretaker.

(5) If the caseworker is unable to identify any potential adoptive resources for adoption placement selection in the first or second order of preference set forth in OAR 413-070-0730(1) -- who are relatives as defined in OAR 413-120-0710(12)(a)-(d) or a current caretaker and meet the criteria in paragraphs (3)(d)(A)-(C) of this rule -- or a Child Welfare Program Manager has made the decision to consider a current caretaker along with general applicant under OAR 413-120-0580(2), the caseworker must identify one to three general applicants as potential adoption resources.

(6) The caseworker may, in consultation with his or her supervisor, submit a written recommendation to the Child Welfare Program Manager that an exception to the order of preference set forth in OAR 413-120-0730(1) be requested to allow consideration of additional potential adoptive resources for adoption placement selection when the caseworker believes that an exception is in the best interest of each child.

(a) Upon the recommendation of a caseworker and supervisor, the Child Welfare Program Manager may submit a written request for an exception to the order of preference set forth in OAR 413-120-0730(1) from the Adoption Program Manager if the Child Welfare Program Manager determines that an exception is in the best interest of each child.

(b) The Child Welfare Program Manager's written request must include the following documentation:

(A) The potential adoptive resources already identified for the adoption placement selection process;

(B) The relative, current caretaker, or specific general applicant the caseworker is requesting for inclusion in the adoption placement selection process;

(C) How the relative, current caretaker, or specific general applicant meets the criteria in subsection (3)(d) of this rule;

(D) Why inclusion of the relative, current caretaker, or specific general applicant in the adoption placement selection process is in the best interest of each child;

(E) The special needs of each child; and

(F) Whether and how the relative, current caretaker, or specific general applicant support the child's ability to continue emotionally significant relationships with relatives.

(c) Within 30 calendar days of receipt of the request for exception, the Adoption Program Manager must review the materials submitted and determine whether or not to grant the exception to the order of preference and include the relative, current caretaker, or specific general applicant in the adoption selection process.

(d) In reviewing the request and determining whether or not to grant the exception, the Adoption Program Manager shall consider the following factors:

(A) How the relative, current caretaker, or specific general applicant meets the criteria in subsection (3)(d) of this rule;

(B) Why inclusion of the relative, current caretaker, or specific general applicant in the adoption placement selection process is in the best interest of each child;

(C) The special needs of each child; and

(D) Whether and how the relative, current caretaker, or specific general applicant supports the child's ability to continue emotionally significant relationships with relatives.

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(E) The length of a child's placement with an individual may not be considered as the sole basis for granting an exception.

(e) Within ten business days of making a determination whether or not to grant the exception, the Adoption Program Manager must specify in writing to the Child Welfare Program Manager:

- (A) Whether or not the exception was granted;
- (B) How the determination supports the best interest of each child; and

(C) The relative, current caretaker, or specific general applicant to be included in the adoption placement selection process along with the one to three potential adoptive resources already identified by the caseworker.

(7) In consultation with the supervisor, the caseworker must determine the appropriate adoption selection process pursuant to Child Welfare Policy I-G.1.5, "Adoption Placement Selection", OAR 413-120-0020.

(8) The caseworker must consult with the adoption worker for each of the identified potential adoptive resources pursuant to Child Welfare Policy I-G.1.5, "Adoption Placement Selection", OAR 413-120-0021(2).

(9) The caseworker must document the actions taken under this rule 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; CWP 4-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 5-2011(Temp)

Filed with Sec. of State: 3-22-2011

Certified to be Effective: 3-22-11 thru 9-18-11

Notice Publication Date:

Rules Amended: 413-120-0020, 413-120-0021, 413-120-0035, 413-120-0060

Subject: OAR 413-120-0020 about adoption placement selection options is being amended to clarify the actions the Department may be taking in searching for a child's relatives when considering how to move forward with adoption selection processes. This rule is also being amended to clarify how an adoption selection is made when the Department has granted an exception to the order of preference in adoption selection.

OAR 413-120-0021 about adoption placement selection by a caseworker is being amended to clarify the actions the Department may take when a relative first expresses interest in being considered as a potential adoptive resource at a later stage in the process.

OAR 413-120-0035 about the invitation to and notification of the adoption committee is being amended to clarify the actions the Department may take when a relative first expresses interest in being considered as a potential adoptive resource at a later stage in the adoption committee process. This rule is also being amended to state when an exception to timelines set forth in the rule can be implemented.

OAR 413-120-0060 is being amended to clarify the Department staff who must receive notice upon receipt of a request for the review of an adoption selection decision.

Rules Coordinator: Annette Tesch—(503) 945-6067

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, nor is the Department or another entity conducting an adoption home study for 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 as defined in OAR 413-120-0010(16)(a)-(c);

(B) A relative as defined in OAR 413-120-0010(16)(d) and a current caretaker;

(C) A current caretaker considered under OAR 413-120-0595 and a general applicant; or

(D) A relative, current caretaker, or specific general applicant for whom an exception to the order of preference has been granted under OAR 413-120-0760.

(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

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; CWP 5-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

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:

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(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.

(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 an adoption home study to be conducted with a relative 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; CWP 5-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

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:

(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.

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(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 an adoption home study to be conducted with the relative 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.

(11) The timelines in this rule may be changed by the committee facilitator when the individuals identified in OAR 413-120-0025(1), (2), and (3) agree on a new timeline.

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; CWP 5-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

413-120-0060

Review of the Adoption Placement 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 OAR 413-120-0057(2)(b).

(c) When a request for review has been received, the Adoption Program Manager or designee must notify the DHS Assistant Director for CAF or designee and 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 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; CWP 5-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 6-2011(Temp)

Filed with Sec. of State: 4-4-2011

Certified to be Effective: 4-4-11 thru 10-1-11

Notice Publication Date:

Rules Amended: 413-110-0132

Subject: OAR 413-110-0132 about the process to be followed and considerations to be made when separating siblings for purposes of adoption is being amended to clarify when the Department utilizes a permanency committee process for seeking a sibling separation decision, clarify when this is not required, and to make the rule easier to follow.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-110-0132

Consideration of Sibling Separation

(1) A *permanency committee* is used to consider the permanent separation of siblings in the legal custody of the Department through adoption, unless an *adoptive resource* has been selected for one or more siblings.

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(2) 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.

(3) 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*.

(4) When the *permanency committee* cannot reach agreement, each *permanency committee* member makes his or her respective recommendations known to the *committee facilitator*.

(5) 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 (2)(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 & 418.945

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; CWP 6-2011(Temp), f. & cert. ef. 4-4-11 thru 10-1-11

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 9-2011(Temp)

Filed with Sec. of State: 3-22-2011

Certified to be Effective: 3-22-11 thru 8-15-11

Notice Publication Date:

Rules Amended: 461-135-0400

Rules Suspended: 461-135-0400(T)

Subject: OAR 461-135-0400 as amended by temporary rule on February 16, 2011 is being further amended to suspend the eligibility requirement that new Employment Related Day Care (ERDC) clients had benefits in the Refugee (REF), the State Family Pre-SSI/SSDI Program (SPFSS), or the Temporary Assistance to Needy Families (TANF) program in the prior three months. This rule is also being amended to suspend the Child Care Reservation List which had been used for clients ineligible due to the requirement being suspended.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0400

Specific Requirements; ERDC

(1) The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules.

(2) To be eligible for ERDC, a *filing group* (see OAR 461-110-0350) must meet the requirements of all of the following subsections:

(a) At least one caretaker (see OAR 461-001-0000) must receive income from employment (other than self-employment, see OAR 461-145-0910), including employment through a work study program.

(b) The filing group must include a child who needs child care.

(c) The filing group must have an allowable child care need as described in OAR 461-160-0040. If there are two adults required to be in the filing group, and one of the adults is unemployed or self-employed, the 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.

Stat. Auth.: ORS 409.050, 411.060, 411.070

Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.010, 411.060, 411.070, 411.122, 411.141, 418.485, 2009 OL ch. 827

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 34-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 7-2011(Temp), f. & cert. ef. 2-16-11 thru 8-15-11; SSP 9-2011(Temp), f. & cert. ef. 3-22-11 thru 8-15-11

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

Adm. Order No.: SSP 10-2011

Filed with Sec. of State: 3-31-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 2-1-2011

Rules Amended: 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

Rules Repealed: 461-115-0705(T), 461-135-0095(T), 461-150-0055(T), 461-155-0030(T), 461-160-0015(T), 461-160-0400(T), 461-160-0430(T), 461-160-0700(T), 461-170-0010(T), 461-190-0211(T)

Subject: 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

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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 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 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.

OAR 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

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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. 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 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 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 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 eli-

gibility) 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.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-110-0210 Household Group

(1) This rule describes who is included in the household group. The household group generally consists of the individuals who live together with or without the benefit of a dwelling. For homeless people, the household group consists of the individuals who consider themselves living together.

(2) A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has, separate from any other dwelling, an access to the outside that does not pass through another dwelling, a functional sleeping area, bathroom, and kitchen facility.

(3) Each individual in the household group who applies for benefits is an applicant. The household group and applicants form the basis for determining who is in the remaining eligibility groups.

(4) For all programs except the SNAP program, a separate household group is established for individuals who live in the same dwelling as another household group, if all the following subsections are true:

(a) There is a landlord-tenant relationship between the two household groups in which the tenant is billed by the landlord at fair market value (see ORAR 461-001-0000) for housing.

(b) The tenant lives independently from the landlord.

(c) The tenant:

(A) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or

(B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at fair market value.

(5) Individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time, except as follows:

(a) In the ERDC program, if a child (see ORAR 461-001-0000) lives with different caretakers during the month, the child is considered a member of both household groups.

(b) In the MAA, MAF, and TANF programs:

(A) If a parent (see ORAR 461-001-0000) sleeps at least 30 percent of the time during the calendar month in the home of the dependent child (see ORAR 461-001-0000), the parent is in the same household group as the dependent child.

(B) A dependent child is included in the household group with the caretaker relative (see ORAR 461-001-0000), who usually has the major responsibility for care and control of the dependent child, if the dependent child lives with two household groups in the same calendar month for at least one of the following reasons:

(i) Education.

(ii) The usual caretaker relative is gone from the household for part of the month because of illness.

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(iii) A family emergency.

(c) In the SNAP program:

(A) The individual is a member of the household group that provides the individual more than half of his or her 21 weekly meals. If the individual is a child, the child is a member of the household group credited with providing the child more than half of his or her 21 weekly meals. A household group is credited with providing breakfast and lunch for each day the child departs that group's home for school, even if the child eats no breakfast or lunch at that home.

(B) During the month in which a resident of a domestic violence shelter (see OAR 461-001-0000) enters the domestic violence shelter, the resident may be included both in the household group he or she left and in a household group in the domestic violence shelter.

(6) In the OSIPM program, individuals receiving waived care or nursing facility care are each an individual household group.

(7) In the QMB program, the household group consists of the client and the client's spouse (see OAR 461-001-0000), even if the spouse does not meet all nonfinancial eligibility requirements.

(8) Individuals absent from the household for 30 days or more are no longer part of the household group, except for the following:

(a) In all programs except the SNAP program, an individual in an acute care medical facility remains in the household group unless the individual enters long-term care.

(b) In the CEC, CEM, ERDC, EXT, HKC, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs:

(A) A caretaker relative who is absent for up to 90 days while in a residential alcohol or drug treatment facility is in the household group.

(B) A child who is absent for 30 days or more is in the household group if the child is:

(i) Absent for illness (unless the child is in a long-term care Title XIX facility), social service, or educational reasons;

(ii) In foster care, but expected to return to the household within the next 30 days; or

(iii) For the OHP program only, in a residential alcohol or drug treatment facility. If the household group of the child in a residential alcohol or drug treatment facility is ineligible because of income, the child is a separate household group.

(c) In the ERDC, HKC, and OHP programs, an individual in the household group who is absent because of education, training, or employment, including long-haul truck driving, fishing, or active duty in the U.S. armed forces.

(d) In the MAA, MAF, and REFM programs, in a two-parent household, a parent remains in the household group if the requirements of both of the following paragraphs are met:

(A) The parent is absent because of education, training or employment — including absence while working or looking for work outside the area of his or her residence, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces; and

(B) The other parent remains in the home.

(e) In the REF and TANF programs when a filing group includes more than one caretaker relative (see OAR 461-001-0000), a caretaker relative in the household group who is absent because of education, training, or employment — including absence while working or looking for work outside the area of his or her residence, such as long-haul truck driving, fishing, or active duty in the U.S. armed forces.

(9) In the OSIP-EPD and OSIPM-EPD programs, the household group consists only of the individual applying for or receiving benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 412.025, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 412.025, 414.826, 414.831, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 5-1999(Temp), f. & cert. ef. 4-1-99 thru 6-30-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; 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 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0310

Filing Group; Overview

(1) The requirements specific to individual programs for how the Department determines the members of a filing group are found in OAR 461-110-0330 to 461-110-0430.

(2) The *filing group* consists of the individuals from the household group (see OAR 461-110-0210) whose circumstances are considered in the eligibility determination process. The filing group consists of the following:

(a) Each individual from the *household group* who chooses to apply for benefits; and

(b) Each individual who must apply for benefits because of his or her relationship to an individual described in subsection (a) of this section.

(3) If the filing group does not include at least one applicant who meets all nonfinancial eligibility requirements, the filing group is ineligible.

(4) When an individual in a household group is in more than one filing group for the same program, the filing groups must be combined, unless specified otherwise in administrative rule.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 412.049

Stats. Implemented: ORS 411.060, 411.816, 411.825, 414.042, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0330

Filing Group; EXT, MAA, TANF

(1) In the EXT and MAA programs, a *filing group* must include a dependent child (see OAR 461-001-0000) or unborn child and the following household group (see OAR 461-110-0210) members, even if the member is not an applicant or does not meet nonfinancial eligibility (see OAR 461-001-0000) requirements:

(a) Each parent (see OAR 461-001-0000) of a dependent child in the filing group.

(b) Each parent of an unborn child in the filing group.

(c) Each sibling (see OAR 461-001-0000) of a dependent child in the filing group, except as specified in section (4) of this rule. The sibling must be less than 18 years of age, or 18 years of age and attending school full time.

(d) A caretaker relative (see OAR 461-001-0000).

(e) For a needy caretaker relative of a dependent child in the filing group, the spouse (see OAR 461-001-0000) and each dependent child of the needy caretaker relative.

(2) In the TANF program, a filing group must include a dependent child or unborn child and the following household group members (even if the member is not an applicant or does not meet nonfinancial eligibility requirements):

(a) Each parent of a dependent child in the filing group.

(b) Each parent of an unborn child in the filing group.

(c) Each sibling of a dependent child in the filing group, except as specified in section (4) of this rule. The sibling must be less than 18 years of age, or 18 years of age and attending school full time.

(d) A caretaker relative of the dependent child in the filing group, and the spouse and each dependent child of the caretaker relative.

(3) In the EXT, MAA, and TANF programs:

(a) A dependent child is not included in the filing group if he or she:

(A) Is or will be receiving foster care payments for more than 30 days (see OAR 461-145-0200);

(B) Is receiving adoption assistance (see OAR 461-145-0001); or

(C) Is receiving Title IV-E subsidized guardianship assistance payments (see OAR 461-145-0200).

(b) A parent of a minor parent (see OAR 461-001-0000) is not in the filing group of the minor parent if:

(A) The minor parent does not reside with his or her parent; or

(B) The parent of the minor parent is in the household group of the minor parent but is not applying for the MAA or TANF program for the minor parent or any sibling of the minor parent.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.006, 412.049, 412.064, 412.124, 418.005

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.816, 412.006, 412.049, 412.064, 418.005

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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; 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 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0340

Filing Group; MAF and SAC

(1) In the MAF program, a *filing group* consists of the following individuals:

(a) Each applicant who meets all nonfinancial eligibility requirements.

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(b) Each of the following *household group* (see OAR 461-110-0210) members, even if the member did not apply or does not meet nonfinancial eligibility requirements:

(A) Each parent (see OAR 461-001-0000) of a dependent child (see OAR 461-001-0000) in the filing group.

(B) Each parent of an unborn child, as follows:

(i) If there is no other dependent child in the filing group, both the mother and the father are in the filing group.

(ii) If there is another dependent child in the filing group, the mother is in the filing group. The father is in the filing group only if he is the father of a dependent child in the filing group or is legally married (see OAR 461-001-0000) to the mother.

(c) Except as provided in subsection (2)(a) of this rule, each sibling (see OAR 461-001-0000) of a dependent child if the sibling meets all of the following nonfinancial eligibility requirements:

(A) The age requirement in OAR 461-120-0510.

(B) The requirement to live with a caretaker relative (see OAR 461-001-0000) under OAR 461-120-0630.

(C) A deprivation requirement of the MAF program, described under OAR 461-125-0010.

(D) The citizenship or alien status requirements in OAR 461-120-0110.

(2) Notwithstanding the requirements of section (1) of this rule, in the MAF program:

(a) A sibling of a dependent child may be excluded from the filing group if the sibling is receiving adoption assistance (see OAR 461-001-0000) or guardianship assistance (see OAR 461-145-0001 and 461-145-0200) and if counting the sibling's income causes the filing group to be ineligible for benefits.

(b) A dependent child is not included in the filing group if the dependent child is or will be receiving foster care payments for more than 30 days.

(c) A minor parent (see OAR 461-001-0000) may form a separate filing group with his or her dependent child or children when the minor parent lives with an adult relative who is not his or her parent.

(3) In the SAC program, the filing group includes each household group member who meets all nonfinancial eligibility requirements.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 414.025, 414.231

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0350

Filing Group; ERDC

In the ERDC program:

(1) The filing group consists of each of the following applicants and household group (see OAR 461-110-0210) members, even if the individual does not meet nonfinancial eligibility requirements:

(a) The caretaker (see OAR 461-001-0000) of the child for whom ERDC benefits are requested, except this does not apply to a child care provider caring for the child of an individual:

(A) Who is a member of a National Guard or U.S. Armed Forces Reserve unit; and

(B) Who has been called to active duty away from the child's home for more than 30 days.

(b) An unmarried child and any sibling (see OAR 461-001-0000), less than 18 years of age or 18 years of age and attending secondary school or vocational training at least half time, in the care and custody of the caretaker. A foster child is included if the caretaker wants to include the child in the need group (see OAR 461-001-0000).

(c) Any parent (see OAR 461-001-0000) of a child required to be in the filing group.

(d) Any parent of an unborn child, if the sibling of the unborn child is required to be in the filing group.

(e) The spouse (see OAR 461-001-0000) of the caretaker. This includes two individuals not legally married to each other, but presenting themselves to the community as being domestic partners by:

(A) Representing themselves as domestic partners to friends, relatives, neighbors, tradespeople, and others; and

(B) Sharing living expenses and household duties.

(2) A minor parent (see OAR 461-001-0000) may form a separate filing group with his or her dependent child or children when the minor parent applies as the caretaker.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

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 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 32-2003(Temp), f. &

cert. ef. 12-17-03 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0370

Filing Group; SNAP

In the SNAP program:

(1) Except as provided in this rule, the filing group consists of members of a household group (see OAR 461-110-0210) who choose to apply together or customarily purchase and prepare meals together.

(2) Except as provided in sections (3) and (8) of this rule, the following household group members must be in the same filing group, even if they do not customarily purchase and prepare meals together:

(a) Each spouse (see OAR 461-001-0000).

(b) A parent (see OAR 461-001-0000) and his or her child under age 22 living with the parent.

(c) A household group member and any child under age 18 who lives with and is under parental control of that household group member. For the purposes of this subsection, "parental control" means the adult is responsible for the care, control, and supervision of the child or the child is financially dependent on the adult.

(3) In the following specific situations, the Department forms a filing group as indicated:

(a) An individual is not included in the filing group if, during the month the group applied for SNAP program benefits, the individual received SSI benefits through the state of California. This exclusion applies only in the month the group applied and, if necessary to meet notice requirements, in the month following the month the group applied.

(b) An individual is not included in the filing group if during the month the group applied for SNAP program benefits the individual received SNAP program benefits in another household and was not the head of household in the prior household. This exclusion applies only in the month the group applied and, if necessary to meet notice requirements, in the month following the month the group applied.

(c) An elderly (see OAR 461-001-0015) individual and his or her spouse may be considered a separate filing group from others with whom the elderly individual purchases and prepares meals, if:

(A) The elderly individual is unable to purchase or prepare food because of a permanent and severe disabling condition; and

(B) The combined income of the other members of the household group does not exceed the following limit: [Table not included. See ED. NOTE]

(4) A paid live-in attendant may choose not to be in the filing group with the recipient of the services provided, unless required by section (2) of this rule to be in the same filing group.

(5) An individual in foster care, the individual's spouse, and each child under age 22 living with the individual are not eligible to participate in the SNAP program independently of the care or service provider's filing group, but may be included in the provider's filing group if the provider applies for benefits.

(6) Unless required under section (2) of this rule, the following household group members may form a separate filing group from other members of the household group:

(a) A resident of an alcohol or drug treatment and rehabilitation program certified by the Department for which an employee of the facility is the authorized representative (see OAR 461-135-0550). A resident's spouse in the same facility may be in a separate filing group, but a child of a resident must be in the same filing group as the resident.

(b) A resident in group living (see OAR 461-001-0015).

(c) A resident of a public or private non-profit homeless or domestic violence shelter (see OAR 461-135-0510).

(d) An individual who is a resident of federally subsidized housing for the elderly, an individual with a disability, or blind recipient of benefits under Title I, II, X, XIV, or XVI of the Social Security Act.

(7) A member of the household group who pays the filing group for room and board (lodger) is treated as follows:

(a) A lodger cannot participate in the SNAP program independently of the household group when the lodger pays a reasonable amount for room and board. A reasonable amount is:

(A) An amount that equals or exceeds the Thrifty Food Plan for the individual and anyone in that individual's filing group (see OAR 461-155-0190(2)), if more than two meals per day are provided; or

(B) An amount that equals or exceeds two-thirds of the Thrifty Food Plan for the individual and anyone in the individual's filing group, if two or fewer meals per day are provided.

ADMINISTRATIVE RULES

(b) A lodger may participate in the SNAP program independently of the household group when the lodger pays less than a reasonable amount for room and board.

(8) A household group member is not included in the filing group, if the member is:

- (a) A resident of a commercial boarding house; or
- (b) An ineligible student, as defined in OAR 461-135-0570.

(9) A household group member may be included in two filing groups in the same month, if the member:

- (a) Is a resident of a domestic violence shelter (see OAR 461-001-0000) or safe home (see OAR 461-001-0000); and
- (b) Recently left the household group containing the member's abuser.

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816, 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; 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 20-1991, f. & cert. ef. 10-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; 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 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; 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 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; 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 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; 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 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0390

Filing Group; GA, GAM

In the GA and GAM programs, the filing group consists of the applicant and the applicant's spouse (see OAR 461-001-0000).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; 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 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0400

Filing Group; HKC, OHP

In the HKC and OHP programs, filing groups are formed from the household group (see OAR 461-110-0210) as follows:

(1) A *filing group* consists of one individual, if that individual is not required by this rule to be in a filing group with another individual.

(2) The following individuals must be in the same filing group, even if they are not applicants or do not meet all nonfinancial eligibility requirements:

(a) Individuals legally married (see OAR 461-001-0000) to each other and each child of either spouse (see OAR 461-001-0000).

(b) With respect to a child or unborn, each parent (see OAR 461-001-0000) of the child or unborn and the children of each parent.

(c) Each sibling (see OAR 461-001-0000) under 19 years of age.

(3) A child whose caretaker relative (see OAR 461-001-0000) is not the child's parent may constitute a separate filing group or may be in a filing group with the caretaker relative, at the option of the caretaker relative.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 414.025, 414.231, 414.826, 414.831

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; 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 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0410

Filing Group; OSIP, OSIPM, QMB

(1) In the OSIPM program (except OSIPM-EPD and OSIPM-IC):

(a) Except as provided in subsection (b) of this section, for applicants who live in a standard living arrangement (see OAR 461-001-0000), the filing group consists of each applicant and the spouse (see OAR 461-001-0000) of each applicant.

(b) For an applicant who is a child (see OAR 461-001-0000) living in a standard living arrangement and not assumed eligible, the filing group consists of each applicant and each parent (see OAR 461-001-0000) of an applicant.

(2) In the OSIPM program (except OSIPM-EPD and OSIPM-IC), when individuals live in a nonstandard living arrangement (see OAR 461-

001-0000), the filing group consists only of the individual applying for benefits.

(3) In the OSIPM-EPD and OSIPM-IC programs, the filing group consists only of the individual applying for benefits.

(4) In the QMB program, whether in a standard living arrangement or a nonstandard living arrangement, the filing group consists of each applicant and the following household members:

(a) The spouse of an applicant.

(b) Each parent of a child, if the child is applying and not assumed eligible.

(c) Each child of the applicant, if the applicant wants to include the child in the need group (see OAR 461-110-0630).

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; 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 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 22-2004, f. & cert. ef. 10-1-04; 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 17-2008, f. & cert. ef. 7-1-08; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0430

Filing Group; REF, REFM

In the REF and REFM programs:

(1) The filing group consists of only the individuals described in at least one of the following three subsections:

(a) A single adult who has no spouse (see OAR 461-001-0000) or dependent child (see OAR 461-001-0000) in the household group (see OAR 461-110-0210).

(b) A legally married (see OAR 461-001-0000) couple who is in the same household group and has no dependent child.

(c) A TANF program filing group (see OAR 461-110-0330) that is ineligible for TANF program benefits.

(2) A separate REF and REFM program filing group may be formed within a household group consisting of only the newly arriving refugees, if all of the following requirements are met:

(a) The newly arrived refugee is rejoining a spouse (see OAR 461-001-0000) or a parent (see OAR 461-001-0000) of a common child in the household group who does not meet the REF program eligibility requirement under OAR 461-135-0900(4);

(b) The previously arrived spouse or parent of a common child meets the requirements of both of the following paragraphs:

(A) Is working and the individual's income is equal to or exceeds both the REF and TANF program countable (see OAR 461-001-0000) income and adjusted income (see OAR 461-001-0000) limits (see OAR 461-155-0030); and

(B) Has been in the United States for more than eight months.

(c) There is at least one adult in the new filing group.

(3) A separate REF and REFM program filing group may be formed within a household group consisting of only the newly arriving refugees, if the spouse of the refugee does not meet the requirements of OAR 461-135-0900(2).

Stat. Auth.: ORS 411.060, 411.070, 412.006, 412.049, 412.064

Stats. Implemented: ORS 411.060, 411.070, 412.006, 412.049, 412.064

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0530

Financial Group

(1) Except as provided in section (5) of this rule, a "financial group" consists of the filing group members whose income and resources the Department considers in determining eligibility (see OAR 461-001-0000) and benefits.

(2) In the EXT, MAA, MAF, REF, REFM, and SAC programs, the financial group consists of each individual in the filing group, except the following:

(a) 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 (see OAR 461-110-0630); and

(b) An individual who is eligible for and receives an SSI cash payment.

(3) In the HKC and OHP programs, the financial group consists of each individual in the filing group (including those receiving SSI benefits), except a caretaker relative (other than a parent) who chooses not to be included in the need group.

(4) In the OSIPM (except OSIPM-EPD) program:

(a) For the purposes of this section of this rule, "ineligible" means an individual not eligible to receive either SSI or TANF program benefits.

ADMINISTRATIVE RULES

(b) When an individual lives in a standard living arrangement (see OAR 461-001-0000):

(A) Except as provided in paragraph (B) of this subsection, each member of the filing group is in the financial group.

(B) When an individual is not assumed eligible (see OAR 461-135-0010) for OSIPM:

(i) The individual's spouse (see OAR 461-001-0000) who is ineligible and in the filing group is not in the financial group if the individual's adjusted income (see OAR 461-001-0000) using the deductions allowed under OAR 461-160-0550(3) is greater than the OSIPM program adjusted income standard for a need group of one under OAR 461-155-0250. The financial group consists only of the individual.

(ii) If the ineligible spouse's remaining income after allocation (see OAR 461-160-0551) to each ineligible child is equal to or less than the difference between the couple and the individual SSI standards: the spouse who is ineligible is not considered to be in the financial group when determining income eligibility; however, the spouse is considered to be in the financial group when determining resource eligibility.

(c) When an individual lives in a nonstandard living arrangement (see OAR 461-001-0000), the financial group consists only of the individual applying for benefits, except that the community spouse (see OAR 461-001-0030) is included in the financial group to determine initial eligibility. At initial eligibility, the resources of the community spouse are considered and the provisions of OAR 461-160-0580 apply. The income of the community spouse is not considered in determining initial eligibility, and the community spouse is not included in any other eligibility group.

(5) In the TANF program, the financial group consists of each individual in the filing group except the following:

(a) A caretaker relative, other than a parent, who chooses not to be included in the need group and has income less than the non-needy countable income limit standard (see OAR 461-155-0030) for the filing group of the caretaker relative;

(b) The spouse of a caretaker relative, when the caretaker relative meets the requirements under subsection (a) of this section;

(c) A dependent child of a caretaker relative when the caretaker relative meets the requirements under subsection (a) of this section;

(d) An individual in the filing group solely due to the requirements of OAR 461-110-0310(1)(b); and

(e) An individual who is eligible for and receives an SSI cash payment.

(6) In the ERDC, GA, OSIPM-EPD, QMB, and SNAP programs, the financial group consists of each individual in the filing group.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.049, 412.064, 412.124, 414.231, 414.712

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.006, 412.049, 412.064, 412.124, 414.025, 414.231, 414.712, 414.826, 414.831, 414.839

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 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 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 24-1997, f. 12-31-97, cert. ef. 1-1-98; 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 17-2008, f. & cert. ef. 7-1-08; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 14-2009(Temp), f. & cert. ef. 7-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0630 Need Group

(1) The "need group" consists of the individuals whose basic and special needs are used in determining eligibility (see OAR 461-001-0000) 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, 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 individuals are not in the need group:

(a) A member disqualified for an intentional program violation (see OAR 461-195-0601).

(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 may not include:

(A) A parent (see OAR 461-001-0000) 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 may not be in the need group because of a disqualification penalty.

(ii) An individual who may not 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.

(10) In the OSIPM (except OSIPM-EPD) program:

(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, 411.706, 411.816, 412.049, 414.231

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; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-110-0750 Benefit Group

(1) A "benefit group" consists of the individuals who receive benefits.

(2) Except as provided in section (3) of this rule, for an individual not assumed eligible (see OAR 461-135-0010), the benefit group consists of each individual from the need group (see OAR 461-110-0630) requesting benefits who meets all financial and nonfinancial eligibility requirements.

(3) In the GA and GAM programs, the following individuals are not in the benefit group:

(a) An individual receiving or deemed to be receiving SSI or SSDI benefits.

(b) An individual who meets the non-disability eligibility requirements under Title II of the Social Security Act.

ADMINISTRATIVE RULES

(4) For individuals assumed eligible (see OAR 461-135-0010), the benefit group consists of the individuals who are in the benefit group of the program used to assume eligibility.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; 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 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-115-0705

Required Verification; BCCM, HKC, MAA, MAF, OHP, SAC

(1) This rule establishes verification requirements for the BCCM, EXT, HKC, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except as provided in section (3) of this rule, each client declaring U.S. citizenship must provide acceptable documentation of citizenship and identity. For purposes of this rule, acceptable documentation consists of any of the documents permitted under section 1903(x) of the Social Security Act (42 U.S.C. 1396b).

(a) A new applicant must provide acceptable documentation as a condition of eligibility (see OAR 461-001-0000). Except for an applicant whose medical benefits previously were closed after March 31, 2009 for not providing acceptable documentation, an applicant's medical assistance may not be delayed for citizenship documentation while the eligibility decision is pending if all other medical assistance eligibility requirements have been met.

(b) A current recipient who has not already provided acceptable documentation must provide acceptable documentation as a condition of eligibility when requested by the Department.

(c) A client who already has provided acceptable documentation is not required to provide additional evidence during a subsequent application for benefits or redetermination of eligibility.

(3) Each of the following clients is exempt from the requirements of section (2) of this rule, a client who is:

- (a) Assumed eligible under OAR 461-135-0010(5);
- (b) Eligible for or receiving Medicare;
- (c) Presumptively eligible for the BCCM program;
- (d) Receiving Social Security Disability Income (SSDI); or
- (e) Receiving Title IV-E benefits.

(4) At initial application and at any other time it affects the client, the following must be verified:

(a) The requirement in OAR 461-120-0210 to have or apply for a social security number.

(b) Alien status for an applicant who indicates he or she is not a U.S. citizen, and for a client who meets the alien status requirement under OAR 461-120-0125(4)(b) the client's alien status must be verified at each certification.

(5) When the pregnancy of a client is first reported, it must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or similar facility.

(6) In the HKC, MAA, MAF, OHP, and SAC programs, at initial application, recertification, and at any other time it affects the client, the Department must verify the client's statement of income. If no verification is available, the Department accepts the client's statement.

(7) In the OHP-OPU program:

(a) The Department must verify the premium exemption allowed because a client is:

(A) A member of a federally recognized Indian tribe, band, or group;

(B) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

(C) An individual eligible for benefits through an Indian Health Program.

(b) A client enrolled full time in higher education must provide verification, at application and recertification, that the client meets the requirements of OAR 461 135 1110.

(8) In the EXT, MAA, MAF, OHP-OPC, and OHP-OP6 programs, the amount of the premium for cost-effective employer-sponsored health insurance must be verified.

(9) A client must provide verification for any eligibility requirement in sections (4) to (8) of this rule questioned by the Department.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 414.231
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.400, 411.404, 414.025, 414.231, 414.428, 414.826, 414.831, 414.839
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; 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 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; 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 33-2003, f. 12-31-03, cert.

ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; Suspended by SSP 13-2006(Temp), f. & cert. ef. 9-25-06 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 8-2008, f. & cert. ef. 4-1-08; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; 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 17-2010(Temp), f. & cert. ef. 5-28-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 19-2010(Temp), f. & cert. ef. 7-1-10 thru 11-24-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 37-2010(Temp), f. & cert. ef. 11-1-10 thru 4-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

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 BCCM, CEC, CEM, EXT, HKC, MAA, MAF, OHP, OSIP, OSIPM, QMB, and SAC 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

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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, 411.706, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 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; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-135-0095

Specific Requirements; EXT

(1) To be eligible for EXT benefits, at least one member of the filing group (see OAR 461-110-0330) must meet the requirements of one of the following subsections:

(a) Have been eligible for and received MAA or MAF program benefits and then become ineligible for one of the following reasons:

(A) An increase in the earned income (see OAR 461-145-0120) of the caretaker relative (see OAR 461-001-0000); or

(B) A combination of an increase in both the earned income of the caretaker relative and the child support received.

(b) Have been eligible for and received MAA or MAF program benefits for three of the six months prior to becoming ineligible due to an increase in child support received.

(2) If the filing group becomes ineligible for MAA or MAF when another change occurs in conjunction with the increase in earned income or child support, the filing group is not eligible for EXT if the other change, by itself, makes the filing group ineligible for MAA or MAF.

(3) Eligibility for EXT is limited to the members of the MAA or MAF benefit group (see OAR 461-110-0750) at the time that those benefits end.

(4) Subject to the time periods established in OAR 461-135-0096(1):

(a) Once eligibility for EXT is established, members of the benefit group are ineligible if the filing group contains no dependent child (see OAR 461-001-0000).

(b) A benefit group may regain EXT eligibility after becoming ineligible, even if eligibility was lost due to moving out of state, whenever the benefit group again meets EXT eligibility requirements.

(c) Individuals who have lost EXT eligibility because they leave the household during the EXT eligibility period may regain eligibility when they return to the household.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404
Stats. Implemented: ORS 409.010, 409.040, 411.060, 411.070, 411.404
Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 4-2005, f. & cert. ef. 4-1-05; 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 31-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 40-2010(Temp), f. & cert. ef. 11-15-10 thru 5-13-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-135-0950

Eligibility for Inmates

(1) This rule sets out additional restrictions on the eligibility of inmates for programs covered by Chapter 461 of the Oregon Administrative Rules.

(2) Definition of an “inmate”.

(a) An inmate is an individual living in a public institution who is:

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including an individual being held involuntarily in a detention center awaiting trial or an individual serving a sentence for a criminal offense;

(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;

(C) Residing involuntarily in a facility that is under governmental control; or

(D) Receiving care as an outpatient while residing involuntarily in a public institution.

(b) An individual is not considered an inmate when:

(A) The individual is released on parole, probation, or post-prison supervision;

(B) The individual is on home- or work-release, unless the individual is required to report to a public institution for an overnight stay;

(C) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual; or

(D) The individual is in a public institution pending other arrangements as defined in 42 CFR 435.1010.

(3) Definition of a “public institution”.

(A) A public institution is any of the following:

(a) A state hospital (see ORS 162.135).

(B) A local correctional facility (see ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.

(C) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.

(D) A youth correction facility (see ORS 162.135):

(i) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or

(ii) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.

(b) As used in this rule, the term public institution does not include:

(A) A medical institution as defined in 42 CFR 435.1010 including the Secure Adolescent Inpatient Program (SAIP) and the Secure Children’s Inpatient Program (SCIP);

(B) An intermediate care facility as defined in 42 CFR 440.140 and 440.150;

(C) A publicly operated community residence that serves no more than 16 residents, as defined in 42 CFR 435.1009; or

(D) A child-care institution as defined in 42 CFR 435.1009 with respect to:

(i) Children for whom foster care maintenance payments are made under title IV-E of the Social Security Act; and

(ii) Children receiving TANF-related foster care under title IV-A of the Social Security Act.

(4) Definition of serious mental illness. A client has a serious mental illness if the client has been diagnosed, prior to becoming an inmate of a public institution, by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as suffering from dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is both;

(a) Caused primarily by substance abuse; and

(b) Likely to no longer meet the applicable diagnosis if the substance abuse discontinues or declines.

(5) If this rule indicates that the medical benefits of a client are “suspended”, a client meeting the eligibility requirements of a program covered under chapter 461 of the Oregon Administrative Rules is not required to submit a new application for the benefits to be reinstated.

(6) For all programs covered under chapter 461 of the Oregon Administrative Rules:

(a) Except as provided in OAR 461-135-0750, an inmate of a public institution is not eligible for benefits.

(b) If a pregnant woman receiving medical assistance through the BCCM, CEC, CEM, EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC program becomes an inmate of a public institution, her medical benefits are suspended. When the Department is informed the woman is no longer an inmate, her medical benefits are reinstated — effective on the first day she is no longer an inmate — if she is still in her protected period of eligibility under OAR 461-135-0010.

(c) In the OSIP and OSIPM programs, if a client who is receiving Presumptive Medicaid because of a serious mental illness or SSI becomes an inmate of a public institution, the medical benefits are suspended. Benefits may be suspended for up to twelve full calendar months. When the Department is informed the client is no longer an inmate, the medical benefits are reinstated — effective on the first day the client is no longer an inmate — if the client meets the eligibility requirements for the program,

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including being in suspense status with SSA and the client intends to remain in Oregon. The client has 30 days from the date of release to provide verification that SSI has been reinstated, or the case will be closed if permitted under OAR 461-180-0085.

(d) In the SAC program, medical benefits are suspended if a client who receives medical assistance because of a serious mental illness becomes an inmate of a public institution. When the Department is informed the client is no longer an inmate, the medical benefits will be reinstated, effective on the first day the client is no longer an inmate, and eligibility will be determined for all medical assistance programs.

(7) In the GA and SNAP programs, in addition to the other provisions of this rule, an inmate released from a public institution on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the individual.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.439, 411.443, 411.445, 411.816, 412.014, 412.049, 414.426
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 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 17-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; 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 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-140-0110

Treatment of Periodic Income

(1) For SNAP and TANF clients in a *filing group* that includes at least one member who is working under a TANF JOBS Plus agreement, periodic income (see OAR 461-001-0000) is excluded.

(2) For SNAP and TANF clients not covered under section (1) of this rule, periodic income is averaged over the applicable period.

(3) In the ERDC program, periodic income is counted in one of two ways. The client is given a choice either to average the income over the applicable period or to have the income counted in the month it is expected to be received.

(4) In the OSIP-EPD and OSIPM-EPD programs, periodic income received during a certification period is averaged among the months in the certification period.

(5) In all programs not covered under sections (1) to (4) of this rule, periodic income is counted in the month received.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

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 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) For a client reapplying at the end of an HKC certification period, the tenth month of the HKC certification period.

(d) When the Department initiates a redetermination of eligibility:

(A) The last month of the current OHP program eligibility period if the Department initiates the redetermination by sending a DHS 945 form.

(B) For OHP program cases not covered by paragraph (A) of this subsection, the month the Department initiates a date of request (see OAR 461-115-0030).

(e) For an individual joining a filing group (see OAR 461-110-0400), the month in which the individual requests medical benefits.

(f) For a late reapplication, the month the Department receives the new application.

(g) 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 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 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; SSP 5-2011(Temp), f. & cert. ef. 2-4-11 thru 4-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-155-0030

Income and Payment Standards; MAA, 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:

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(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; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

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.

(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; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-160-0400 Use of Income to Determine Eligibility and Benefits; SNAP

In the SNAP program, the *countable income* (see OAR 461-140-0010) and adjusted income (see OAR 461-001-0000) of the financial group (see OAR 461-110-0530) are used to determine eligibility for SNAP benefits and the benefit level in three steps:

(1) Step one: The countable income of the financial group is compared to the need group's countable income limit in OAR 461-155-0190. If the income equals or exceeds the limit, the need group (see OAR 461-110-0630) is ineligible for SNAP benefits. A financial group that is categorically eligible (see OAR 461-135-0505) for SNAP benefits or that includes a client who is elderly (see OAR 461-001-0015) or has a disability (see OAR 461-001-0015) need not pass this step.

(2) Step two: If the need group is not ineligible under step one, the adjusted income of the financial group is compared to the need group's adjusted income limit (see OAR 461 155 0190). If the income equals or exceeds the limit, the filing group — except one that is categorically eligible for SNAP benefits — is ineligible for SNAP benefits. If the adjusted income is less than the limit, the need group meets the income standard for the SNAP program.

(3) Step three: The benefit level for an eligible need group is determined as follows — adjusted income is multiplied by 30 percent, and the product is rounded to the next higher dollar. The result is subtracted from the need group's payment standard (see OAR 461-155-0190). The remainder is the benefit amount.

Stat. Auth.: ORS 411.816
Stats. Implemented: ORS 411.816
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 37-2010(Temp), f. & cert. ef. 11-1-10 thru 4-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

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) 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.

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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.10-31-0, 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; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

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 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 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; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

461-170-0010

Reporting Changes — Overview

A client is required to report a change in circumstances in accordance with the reporting system in which the client participates, OAR 461-170-0011, and:

(1) For each program in which a client participates, the Department determines the appropriate reporting system. The Department's reporting systems are Change Reporting System (CRS), Simplified Reporting System (SRS), and Transitional Benefit Alternative (TBA). In addition to any required report form, when a client is required by this division of rules to report a change in circumstances, the report may be made by telephone, office visit, report form, or other written notice. The report must be made as follows:

(a) A client using CRS must report a change according to OAR 461-170-0011.

(b) A client using SRS must report a change according to OAR 461-170-0011 and 461-170-0102. An Interim Change Report form is processed according to OAR 461-170-0011 and 461-170-0101 to 461-170-0104.

(c) A client using TBA is not required to report any change.

(2) A change is considered reported effective the date a client, authorized representative, or ineligible student reports the information to a branch office (see OAR 461-001-0000) or to the Office of Private Health Partnerships (OPHP).

(3) A change reported by a client, authorized representative, or ineligible student for one program is considered reported for all programs in which that client participates.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1992(Temp), f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 37-2010(Temp), f. & cert. ef. 11-1-10 thru 4-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

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.

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(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.

(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; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11

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

Adm. Order No.: SSP 11-2011(Temp)

Filed with Sec. of State: 3-31-2011

Certified to be Effective: 4-1-11 thru 9-28-11

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Adopted: 461-155-0575

Subject: OAR 461-155-0575 is being adopted to set out the policy for providing special need in-home supplementary payments to certain Oregon Supplemental Income Program Medical (OSIPM) clients who receive specified in-home services.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0575

Special Need; In-home Supplement; OSIPM

In the OSIPM program:

(1) The Department may provide a monthly supplementary payment for a client who meets the requirements of all of the following subsections:

- (a) The client must receive SSI as his or her only source of income.
- (b) The client must receive in-home services authorized by:
 - (A) The Independent Choices Program (covered under the State Medicaid Plan);
 - (B) A 1915(c) Home and Community-Based Service Waiver; or
 - (C) State Plan Personal Care Services authorized under chapter 411, division 034 of Oregon Administrative Rules.

(2) The amount and duration of payments authorized under this rule are subject to availability of funding as determined by the Department and are considered reimbursement for uncovered assistance needs.

(3) All eligible clients will receive the same monthly payment amount.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706

Hist.: SSP 11-2011(Temp), f. 3-31-11, cert. ef. 4-1-11 thru 9-28-11

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

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

Adm. Order No.: SPD 7-2011

Filed with Sec. of State: 3-31-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 2-1-2011

Rules Amended: 411-054-0005, 411-054-0012

Rules Repealed: 411-054-0005(T), 411-054-0012(O)

Subject: The Department of Human Services (DHS), Seniors and People with Disabilities Division is permanently amending OAR 411-054-0005 (Definitions) and OAR 411-054-0012 (Requirements for New Construction or Initial Licensure) relating to residential care and assisted living 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—(503) 945-6398

411-054-0005

Definitions

For the purpose of these rules, the following definitions apply:

(1) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).

(2) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well being, health, and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.

(3) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility.

(4) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.

(5) "Applicant" means the person, persons, or entity, required to complete a facility application for license. Applicant includes a sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that owns the residential care or assisted living facility business. Applicant also includes the sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that operates the assisted living or residential care facility on behalf of the facility business owner.

(6) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department designated agency charged with the responsibility to

provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department to perform specific activities in relation to residential care and assisted living facilities including:

(a) Conducting inspections and investigations regarding protective service, abuse, and neglect;

(b) Monitoring; and

(c) Making recommendations to the Division regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.

(7) "Assistant Director" means the assistant director of the Division, or that individual's designee.

(8) "Assisted Living Facility (ALF)" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(9) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents. The employee may be either a direct care staff or universal worker as defined in this rule.

(10) "Change of Condition — Short Term" means a change in the resident's health or functioning that is expected to resolve or be reversed with minimal intervention or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(11) "Change of Condition — Significant" means a major deviation from the most recent evaluation that may affect multiple areas of functioning or health that is not expected to be short term and imposes significant risk to the resident. Examples of significant change of condition include but are not limited to:

(a) Broken bones;

(b) Stroke, heart attack, or other acute illness or condition onset;

(c) Unmanaged high blood sugar levels;

(d) Uncontrolled pain;

(e) Fast decline in activities of daily living;

(f) Significant unplanned weight loss;

(g) Pattern of refusing to eat;

(h) Level of consciousness change; and

(i) Pressure ulcers (stage 2 or greater).

(12) "Choice" means a resident has viable options that enable the resident to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.

(13) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(14) "Department" means the Department of Human Services (DHS).

(15) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Creating an environment that allows personal assistance to be provided in privacy, supports dignity as does delivering services in a manner that shows courtesy and respect.

(16) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:

(a) Medication administration;

(b) Resident-focused activities;

(c) Assistance with activities of daily living;

(d) Supervision and support of residents; and

(e) Serving meals, but not meal preparation.

(17) "Directly Supervised" means that a qualified staff member maintains visual contact with the supervised person.

(18) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or manmade that renders the licensee unable to operate the facility or the facility is uninhabitable.

(19) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.

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(20) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(21) "Entity" means an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit, including associations, joint stock companies, and insurance companies, a state, or a political subdivision, or instrumentality including a municipal corporation.

(22) "Exception" means a written variance granted by the Division from a regulation or provision of these rules.

(23) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility.

(24) "FPS" means the Facilities Planning and Safety Program within the Public Health Division.

(25) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.

(26) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.

(27) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.

(28) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(29) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.

(30) "Licensed Nurse" means an Oregon licensed practical or registered nurse.

(31) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

(32) "Managed Risk" means a process by which a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.

(33) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.

(34) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (e.g., heart disease or diabetes).

(a) Modified special diets include but are not limited to:

- (A) Small frequent meals;
- (B) No added salt;
- (C) Reduced or no added sugar; and
- (D) Simple textural modifications.

(b) Medically complex diets are not included.

(35) "New Construction" means:

- (a) A new building;
- (b) An existing building or part of a building that is not currently licensed;
- (c) A major alteration to an existing building; or
- (d) Additions, conversions, renovations, or remodeling of existing buildings.

(36) "Nursing Care" means the practice of nursing as governed by ORS Chapter 678 and OAR chapter 851, division 047.

(37) "Owner" means a person with an ownership interest.

(38) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(39) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(40) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

(41) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(42) "Psychoactive Medications" mean medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive med-

ications include antidepressants, anti-psychotics, sedatives, hypnotics, and anti-anxiety medications.

(43) "Resident" means any person who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.

(44) "Residential Care Facility (RCF)" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

(45) "Restraint" means any physical device that the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.

(46) "Retaliation" means to threaten or intimidate, or take an action that is detrimental to a person (e.g., harassment, abuse, coercion, etc.).

(47) "Service Plan" means a written, individualized plan for services developed by a service planning team and the resident, or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.

(48) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036 that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident.

(49) "Services" means supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.

(50) "Subject Individual" means any person 16 years of age or older on whom the Department may conduct a criminal records check and from whom the Department may require fingerprints for the purpose of conducting a national criminal records check.

(A) For the purpose of these rules, subject individual includes:

(A) All applicants, licensees, and operators of a residential care or assisted living facility;

(B) All persons employed or that are receiving training in an assisted living or residential care facility;

(C) Volunteers, if allowed unsupervised access to residents.

(b) For the purpose of these rules, subject individual does not apply to;

(A) Residents and visitors of residents; or

(B) Persons employed by a private business that provides services to residents and is not regulated by the Department.

(51) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.

(52) "These Rules" mean the rules in OAR chapter 411, division 054.

(53) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:

(a) The general public; or

(b) A specific population, for example, residents with dementia or traumatic brain injury.

(54) "Unit" means an individual living space constructed as a completely private apartment, including living and sleeping space, kitchen area, bathroom, and adequate storage areas.

(55) "Universal Worker" means a facility employee whose assignments include other tasks (e.g., housekeeping, laundry, food service, etc.) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 24-2010(Temp), f. & cert. ef. 10-5-10 thru 4-2-11; SPD 7-2011, f. 3-31-11, cert. ef. 4-1-11

411-054-0012

Requirements for New Construction or Initial Licensure

(1) An applicant requesting approval of a potential license for new construction or licensing of an existing building that is not operating as a licensed RCF or ALF, must request a meeting with the Division before submitting a letter of intent as described in section (3) of this rule.

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(2) Prior to beginning new construction of a building, or purchase of an existing building with intent to request a license, the applicant must provide the following information for consideration by the Division for a potential license:

(a) Demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances, and permit requirements in Oregon, and the ability to deliver quality services to citizens of Oregon; and

(b) Provide a letter of intent as set forth in section (3) of this rule.

(3) LETTER OF INTENT. Prior to application for a building permit, a prospective applicant, with intent to build or operate a facility, must submit to the Division a letter of intent that includes the following:

(a) Identification of potential applicant;

(b) Identification of the city and street address of the intended facility;

(c) Intended facility type (e.g., RCF, ALF, memory care), the intended number of units, and maximum resident capacity;

(d) Statement of whether the applicant is willing to provide care and services for an underserved population and description of any underserved population the applicant is willing to serve;

(e) Indication of whether the applicant is willing to provide services through the state medical assistance program;

(f) Identification of operations within Oregon or within other states that provide a history of the applicant's ability to serve the intended population; and

(g) An independent market analysis completed by a third party professional that meets the requirements of section (4) of this rule.

(4) MARKET ANALYSIS. The applicant must submit a current market analysis to the Division for review and consideration prior to application for a building permit. A market analysis is not required for change of owner applicants of existing licensed buildings. The market analysis must show the need for the services offered by the license applicant and must include:

(a) Description of the intended population to be served, including underserved populations and those eligible to receive services through the state medical assistance program, as applicable;

(b) A current demographic overview of the area to be served;

(c) A description of the area and regional economy and the effect on the market for the project;

(d) Identification of the number of persons in the area to be served who are potential residents;

(e) Description of available amenities (e.g., transportation, hospital, shopping center, traffic conditions, etc.);

(f) Description of the extent, types, and availability of existing and proposed RCFs and ALFs located in the area to be served, as defined in ORS 443.400 to 443.455; and

(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(5) The Division shall issue a written decision of a potential license within 60 days of receiving all required information from the applicant.

(a) If the applicant is dissatisfied with the decision of the Division, the applicant may request a contested case hearing in writing within 14 calendar days from the date of the decision.

(b) The contested case hearing shall be in accordance with ORS chapter 183.

(6) The Division shall consider the applicant's stated intentions and compliance with the requirements of this rule and all structural and other licensing requirements as stated in these rules prior to issuing a license.

(7) BUILDING PLANS. After the letter of intent has been submitted to the Division, one set of building plans and specifications must be submitted to FPS and must comply with OAR chapter 333, division 675.

(a) Building plans must be submitted to FPS;

(A) Prior to beginning construction of any new building;

(B) Prior to beginning construction of any addition to an existing building;

(C) Prior to beginning any remodeling, modification, or conversion of an existing building that requires a building permit; or

(D) Subsequent to application for an initial license of a facility not previously licensed under this rule.

(b) Plans must comply with the Oregon Structural Specialty Code and Oregon Fire Code as required for the occupancy classification and construction type.

(c) Plans must be drawn to a scale of one-fourth inch or one-eighth inch to the foot, and must specify the date when construction, modification, or conversion is expected to be completed.

(d) Construction containing 4,000 square feet or more must be prepared by, and bear the stamp of, an Oregon licensed architect or engineer.

(8) SIXTY-DAYS PRIOR. At least 60 days prior to anticipated licensure the applicant must submit to the Division:

(a) A completed application form with the required fee;

(b) A copy of the facility's written rental agreements;

(c) Disclosure information; and

(d) Facility policies and procedures, ensuring that the facility's administrative, personnel, and resident care operations are conducted in compliance with these rules.

(9) THIRTY-DAYS PRIOR. Thirty days prior to anticipated licensure the applicant must submit:

(a) To the Division, a completed and signed Administrator Reference Sheet that reflects the qualifications and training of the individual designated as facility administrator and a criminal records request; and

(b) To FPS, a completed and signed Project Substantial Completion Notice that attests substantial completion of the building project and requests that an onsite licensing inspection be scheduled.

(10) TWO-DAYS PRIOR. At least two working days prior to the scheduled onsite licensing inspection of the facility the applicant must submit to the Division and FPS, a completed and signed Project Completion/Inspection Checklist that confirms that the building project is complete and fully in compliance with these rules.

(a) The scheduled, onsite licensing inspection may not be conducted until the Project Completion/Inspection Checklist has been received by both FPS and the Division.

(b) The onsite licensing inspection may be rescheduled at the Division's convenience if the scheduled, onsite licensing inspection reveals that the building is not in compliance with these rules as attested to on the Project Completion/Inspection Checklist.

(11) CERTIFICATE OF OCCUPANCY. The applicant must submit to the Division and FPS, a copy of the Certificate of Occupancy issued by the Building Codes Agency having jurisdiction that indicates the intended occupancy classification and construction type.

(12) CONFIRMATION OF LICENSURE. The applicant, prior to admitting any resident into the facility, must receive a written confirmation of licensure issued by the Division.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09; SPD 24-2010(Temp), f. & cert. ef. 10-5-10 thru 4-2-11; SPD 7-2011, f. 3-31-11, cert. ef. 4-1-11

Rule Caption: Continuing Care Retirement Communities.

Adm. Order No.: SPD 8-2011

Filed with Sec. of State: 3-31-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 3-1-2011

Rules Adopted: 411-067-0065, 411-067-0086

Rules Amended: 411-067-0000, 411-067-0010, 411-067-0020, 411-067-0050, 411-067-0055, 411-067-0060, 411-067-0070, 411-067-0080, 411-067-0083, 411-067-0090, 411-067-0100

Rules Repealed: 411-067-0030, 411-067-0087

Subject: The Department of Human Services, Seniors and People with Disabilities Division is permanently updating the continuing care retirement community rules in OAR chapter 411, division 067.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-067-0000

Definitions

(1) "Act" means the Continuing Care Retirement Community Provider Registration Act, ORS Chapter 101.

(2) "Activities of Daily Living" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.

(3) "Adjacent Properties" mean two or more pieces of land that are separated by no more than 1000 feet.

(4) "Affiliated Organization" means any profit or not-for-profit corporation, limited liability company, partnership, sole proprietorship, sponsoring entity, or other form of legal entity:

(a) That is the lessor of the real property on which the facilities of the provider are situated;

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(b) That a provider has identified in the disclosure statement as described in OAR 411-067-0050; or

(c) In which any director, executive officer, or manager of a provider has an equity or debtor financial interest in excess of \$10,000.

(5) "Applicant" means a provider that has submitted an application and disclosure statement to register as a continuing care retirement community.

(6) "Application Fee" means a fee charged to an individual, prior to execution of a residency agreement, apart from an entrance fee.

(7) "Assistant Director" means the assistant director of the Division, or the assistant director's designee.

(8) "Audited Financial Statement" means a provider's financial statement that has been prepared in accordance with the GAAP and audited by an independent certified public accountant in accordance with generally accepted auditing standards. The audited financial statement declares whether the continuing care retirement community was or was not in compliance with its reserve requirements during the audited period.

(9) "Certificate of Registration" means a document that is issued and signed by the Assistant Director of the Division that indicates the provider is registered as a continuing care retirement community.

(10) "Closed Bed Long Term Care Facility" means a licensed nursing facility in a continuing care retirement community that is used exclusively by individuals receiving long term care services under a residency agreement.

(11) "Continuing Care" means directly furnishing or indirectly making available, upon payment of an entrance fee and under a residency agreement, housing and health-related services for a period greater than one year to an individual not related by blood or marriage to the continuing care retirement community provider that is furnishing care. The term applies regardless of whether the care is provided in the continuing care retirement community or in another setting designated by the residency agreement. Health-related services may be provided at a location that is not a part of the continuing care retirement community.

(12) "Continuing Care Retirement Community (CCRC)" means a provider that agrees to furnish continuing care to a resident under a residency agreement. A continuing care retirement community may consist of one or more facilities.

(13) "Department" means the Department of Human Services.

(14) "Division" means the Seniors and People with Disabilities Division of the Department of Human Services.

(15) "Entrance Fee" means an initial or deferred transfer to a provider of a sum of money or property, made or promised to be made as full or partial consideration, for acceptance of one or more residents in a continuing care retirement community. A fee that is less than the sum of the regular periodic charges for one year of residency is not an entrance fee.

(16) "Facility" means physical structures of a continuing care retirement community, on one site or on adjacent properties, operating under the same name and managed as a part of the same continuing care retirement community.

(17) "Generally Accepted Accounting Principles (GAAP)" mean the accounting principles or standards generally accepted in the United States, including but not limited to the accounting standards codification and interpretations thereof as published by the Financial Accounting Standards Board.

(18) "Health-Related Services" includes but is not limited to providing nursing care, assistance with activities of daily living, long-term care, and rehabilitative services.

(19) "Indirect Ownership" means any profit or not-for-profit corporation, limited liability corporation, partnership, sole proprietor, sponsoring entity, or other form of legal entity with ownership interest in an affiliated organization or an indirect economic interest in the net residual value of the provider or both.

(20) "Liquid Reserve" means cash, marketable securities, and net receivables that may be easily converted to cash.

(21) "Living Unit" means a room, apartment, cottage, or other area set aside for the exclusive use of residents.

(22) "Long Term Financing" means funds acquired by borrowing, or sale of bonds, the balance of which is not required to be paid back during the same fiscal year in which they were borrowed (or "sold" in the case of bonds).

(23) "Manager" means a person, corporation, partnership, association, or other legal entity that enters into a contractual arrangement with the provider to manage the continuing care retirement community. "Manager" does not include individuals employed by the provider, corporations affili-

ated with the provider, or other legal entities within the provider's supervision or control.

(24) "New Continuing Care Retirement Community" means a continuing care retirement community being initially registered by a provider but does not apply to the remodeling or expansion of an existing continuing care retirement community's facility on the same or an adjacent site or the annual renewal of an existing continuing care retirement community registration.

(25) "Omit a Material Fact" means the failure to state a material fact required to be stated in any disclosure statement or registration.

(26) "Open Bed Long Term Care Facility" means a licensed nursing facility in a continuing care retirement community that admits individuals who have not signed a residency agreement.

(27) "Ownership Interest" means the possession of equity in the capital, stock, profits, or residual value of the provider.

(28) "Provider" means an owner or operator, whether a natural person, partnership, trust, limited liability company, corporation, or unincorporated association, however organized, of a new or existing continuing care retirement community, whether operated for profit or not, that provides, plans to provide, or agrees to provide, continuing care to one or more unrelated residents under a residency agreement.

(29) "Regular Periodic Charges" mean basic monthly fees charged to a resident on an ongoing basis.

(30) "Residency Agreement" means a contract between a provider and a resident for the provision of continuing care for a period of greater than one year.

(31) "Resident" means an individual who enters into a residency agreement with a provider or who is designated in a residency agreement to be provided with continuing care.

(32) "Residents' Council (Council)" means a body of residents of a continuing care retirement community who are elected by the residents and recognized by the provider as representing the interests of the residents.

(33) "Residual Value" means the net assets upon the liquidation or dissolution of the provider.

(34) "Solicit" means all actions of a provider in seeking to have individuals pay an application fee or enter into a residency agreement by any means including without limitation personal, telephone, mail, or any media distributed or communicated by any means.

(35) "Start-Up Losses" means the excess of expenses over revenues that occur or are anticipated to occur.

(36) "These Rules" mean the rules in OAR chapter 411, division 067. Stat. Auth.: ORS 101.150 & 410.090
Stats. Implemented: ORS 101.020
Hist.: SSD 9-1990, f. & cert. ef. 3-26-90; SDDS 5-1999, f. 4-30-99, cert. ef. 5-1-99; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0010

Registration Required

(1) Providers who operate a CCRC must register with the Division.

(2) If a provider operates more than one CCRC facility, each facility must be registered with the Division and separately listed on the disclosure statement.

(3) No entity shall claim to be a CCRC in Oregon without being registered pursuant to these rules.

(4) A new CCRC provider must register with the Division before:

(a) Entering into a residency agreement with a nonresident;

(b) Soliciting either a prospective resident or nonresident to pay an application fee or execute a residency agreement; or

(c) Collecting an entrance fee.

(5) The provider must apply for registration with the Division on forms prescribed by the Division as described in OAR 411-067-0020. The application must include a disclosure statement as described in OAR 411-067-0050.

(6) The Division shall issue a notice of filing to the applicant within 10 business days after receipt of the completed application for registration of a new CCRC and the initial registration fee.

(7) The Division shall enter an order registering the provider or rejecting the registration within 60 days of the notice of filing. If no order of rejection is entered within 60 days from the date of notice of filing, the provider shall be considered registered unless the provider and the Division agree in writing to an extension of time. If no order of rejection is entered within the time period as so extended, the provider shall be considered registered.

(8) The Division shall enter an order registering the provider if the Division determines that the requirements of these rules and ORS chapter 101 have been met.

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(9) The Division shall notify the applicant that the application for registration must be corrected within 30 days if the Division determines that any of the requirements of these rules and ORS chapter 101 have not been met.

(a) The Division may enter an order rejecting the registration if the applicant does not meet the requirements within 30 days. The order shall include the findings of fact upon which the order is based and which may not become effective until 20 days after the end of the foregoing 30-day period.

(b) During the 20-day period, the applicant may petition for reconsideration and request a contested case hearing pursuant to ORS chapter 183.

(c) If a contested case hearing has been requested, an order of rejection may not take effect, in any event, until a decision is rendered by the administrative law judge that sustains the Division's decision to reject the registration.

Stat. Auth.: ORS 101.150 & 410.090
Stats. Implemented: ORS 101.030
Hist.: SSD 9-1990, f. & cert. ef. 3-26-90; SDDS 5-1999, f. 4-30-99, cert. ef. 5-1-99; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0020

Registration

(1) APPLICATION FOR REGISTRATION:

(a) Application for registration must be made to the Division on forms prescribed by the Division. The application must include:

(A) The registration fee as described in section (2) of this rule;

(B) The annual disclosure statement as described in OAR 411-067-0050; and

(C) The reserve requirement statement as described in OAR 411-067-0060.

(b) The application is not considered to be complete until the Division receives all required information and the registration fee.

(c) The application for registration must be signed and notarized by the provider or an authorized individual.

(d) Application for registration must be made annually to the Division as described in this section.

(2) REGISTRATION FEE:

(a) The initial application for registration must be accompanied by a fee of \$500.

(b) After the initial registration, the subsequent annual registration fee shall be \$250 per facility.

(3) ISSUANCE OF REGISTRATION:

(a) The Division shall issue a certificate of registration to the provider once the provider has:

(A) Submitted a completed application, disclosure statement, registration fee, and other required information;

(B) Met the reserve requirement as described in OAR 411-067-0060; and

(C) Met all other requirements as described in ORS chapter 101 and these rules.

(b) The certificate of registration shall identify the provider as a CCRC and include:

(A) The name and address of the provider;

(B) The names and addresses of all facilities owned and operated by the provider;

(C) The effective date of the registration; and

(D) The following statement in a prominent location and typeface: "A certificate of registration does not constitute approval, recommendation or endorsement of the community by the Seniors and People with Disabilities, and this registration does not evidence the accuracy or completeness of the information set forth in the disclosure statement."

(c) The provider must use a copy of the certificate of registration as the cover page for the disclosure statement as described in OAR 411-067-0050.

Stat. Auth.: ORS 101.150 & 410.090
Stats. Implemented: ORS 101.030 & 101.040
Hist.: SSD 9-1990, f. & cert. ef. 3-26-90; SDDS 5-1999, f. 4-30-99, cert. ef. 5-1-99; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0050

Disclosure Statement

(1) All providers must file a disclosure statement with the Division upon initial application and annually thereafter. The disclosure statement must be on forms prescribed by the Division.

(2) DISCLOSURE STATEMENT: The disclosure statement must include:

(a) The rights and requirements of the residents described in OAR 411-067-0086;

(b) The names of the individuals who constitute the provider or, if the provider is a partnership, limited liability company, corporation, or other legal entity, whether for profit or not for profit, the name of the legal entity and each of the officers, directors, trustees, or managing general partners of the legal entity and a description of each individual's duties on behalf of the legal entity;

(c) The business address of the provider and a statement of whether the provider is an individual, partnership, limited liability company, corporation, or other affiliated organization;

(d) The names and business addresses of any individual having any more than a 10 percent direct or indirect ownership or beneficial interest in the provider, the percentage of the direct or indirect ownership or beneficial interest, and a description of each individual's interest in or occupation with the provider;

(e) A statement as to whether the provider is or is not affiliated with any other organization of any kind, the extent of the affiliation, if any, and the extent to which the organization is responsible for the financial and contractual obligations of the provider;

(f) The provision of the Internal Revenue Code, if any, under which the provider or any affiliated organization is exempt from the payment of federal income taxes;

(g) The location and general description of the CCRC including the location and number of living units and licensed long term care beds considered part of the CCRC, and any other care facilities owned or operated by the provider. The provider must disclose the following about any proposed CCRC or other care facilities:

(A) The estimated completion date;

(B) A statement as to whether or not construction has begun; and

(C) Any contingencies subject to which construction may be deferred;

(h) The number of open bed long term care facility beds operated by the CCRC;

(i) A description of services provided or proposed to be furnished by the provider under its residency agreements including without limitation:

(A) The extent to which medical care, long term care, or health related services are furnished, and the locations where the services shall be furnished. If the services are furnished at a facility that is not registered as part of the CCRC's campus, the provider must state the location where the services are furnished and any additional fees associated with the services; and

(B) The services made available by the CCRC at an extra charge over and above the entrance fee;

(j) A description of all fees required of each resident including the entrance fee, regular periodic charges, and the manner in which any additional fees or regular periodic charges shall be determined. The description must include:

(A) The circumstances under which the resident shall be permitted to remain in the CCRC in the event the resident is unable to pay regular periodic charges or other fees;

(B) The terms and conditions under which the residency agreement may be canceled by the provider or the resident or in the event of the death of the resident prior to or following occupancy of the living unit;

(C) In boldfaced type, the percentage of the entrance fee refund required by ORS 101.080 and the manner in which this percentage is calculated;

(D) The conditions under which a living unit occupied by a resident may be made available by the provider to another resident other than on the death of the resident executing the residency agreement;

(E) The manner by which the provider may adjust regular periodic charges or other recurring fees;

(F) A statement of the fees to be charged if the resident marries or divorces while at the designated CCRC, the terms concerning a resident's spouse's entry to or departure from a CCRC, and the consequences if a new spouse does not meet the requirements for entry; and

(G) The terms and conditions for the transfer of a resident out of the CCRC;

(k) The provider's most recent audited financial statement. The audited financial statement may not have been prepared more than 16 months prior to the date of the initial application for registration;

(l) A copy of the residency agreement offered to the prospective resident by the provider;

(m) A statement on the cover page in a prominent location and typeface that registration of the CCRC does not constitute approval, recommendation, or endorsement of the CCRC by the Department, and that such

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registration does not evidence the accuracy or completeness of the information set forth in the disclosure statement;

(n) Copies of the primary written brochures and written promotional materials furnished to prospective residents;

(o) A full description of all contracts that the provider has entered into with affiliated organizations and an explanation of the financial impact that the contracts may have on residents;

(p) An affidavit signed by an authorized representative of the CCRC confirming that the disclosure statement is complete and accurate;

(q) If required, a copy of the escrow agreement as described in OAR 411-067-0070.

(r) Any person or legal entity named in subsection (b) or (d) of this section and any proposed or existing manager must disclose:

(A) Business experience in operation or management of CCRCs or other licensed long term care facilities;

(B) Whether the person or legal entity has been convicted of a crime;

(C) Whether the person has been a party to any civil action in which a judgment for damages was obtained or in which an injunction was issued against the person for fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(D) Whether the person or legal entity has been a party to any civil action in which a judgment for damages was obtained or in which an injunction was issued against the person or legal entity for fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(E) Whether the person or legal entity has had any state, federal permits, or licenses, suspended or revoked, or if a state or federal authority has disqualified the person or legal entity from providing services in the Medicare or Medicaid program in connection with the person or legal entity's business activities;

(F) The identity of any business or professional service entity in which the person or legal entity has a 10 percent or greater ownership interest and which the provider intends to employ to provide goods, services, or any other things of value; and

(G) The anticipated costs to the provider or a statement that such costs cannot presently be estimated.

(3) INITIAL DISCLOSURE STATEMENT: In addition to complying with all the provisions of section (2) of this rule, the provider must submit on behalf of a new CCRC a statement of the anticipated source and application of funds used or to be used in the purchase or construction of the CCRC including:

(a) An estimate of the cost of purchasing or constructing and equipping the CCRC that the provider expects to incur or become obligated for prior to the commencement of the operation of the CCRC;

(b) A description of any mortgage loan or other long term financing intended to be used for the financing of the CCRC;

(c) An estimate of the total entrance fees to be received from the residents at or prior to the commencement of operation of the CCRC based on projected occupancy at the time the CCRC commences operation; and

(d) An estimate of the funds, if any, anticipated to be necessary to pay for start-up losses.

(4) ANNUAL DISCLOSURE STATEMENT:

(a) In addition to the information required in section (2) of this rule, the annual disclosure statement must include:

(A) A copy of the certificate of registration. The certificate of registration must be used as the cover page for the annual disclosure statement;

(B) A disclosure of any change in ownership or manager;

(C) The frequency and the dates of the residents' council meetings or meetings with all residents of the CCRC as described in OAR 411-067-0083; and

(D) Copies of all notices of changes in regular periodic charges or notices of proposed changes in fees or services that were given to residents during the provider's most recently completed fiscal year.

(b) To amend an annual disclosure statement, a provider must file all amended documents and new materials with the Division.

(5) RIGHT OF REVIEW:

(a) The provider must notify prospective residents of their right to review the initial disclosure statement after entry of an order registering the provider and before the provider enters into any residency agreement with or on behalf of the prospective resident.

(b) The provider must make the current annual disclosure statement available to each resident and prospective resident.

(c) The provider must make copies of the initial disclosure statement available upon request. The initial disclosure statement must be available during regular business hours in the business office of the CCRC.

(6) DUE DATE FOR ANNUAL DISCLOSURE STATEMENT:

(a) If a certificate of registration is issued six months or more prior to the provider's fiscal year end, then the next annual disclosure statement and registration fee is due by the fourth month following the first fiscal year end, after the issuance date of the certificate of registration and annually thereafter.

(b) If a certificate of registration is issued less than six months prior to the provider's fiscal year end, then the next annual disclosure statement and registration fee is due by the fourth month following the second fiscal year end, after the issuance date of the certificate of registration and annually thereafter.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.050, 101.052 & 101.080

Hist.: SSD 9-1990, f. & cert. ef. 3-26-90; SDSL 5-1999, f. 4-30-99, cert. ef. 5-1-99; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0055

Residency Agreement

(1) The provider and the prospective resident must sign and date a residency agreement before CCRC services begin.

(2) A copy of the agreement must be provided to the resident.

(3) The residency agreement must list in boldface type the percentage of the entrance fee to be refunded and the manner in which the percentage of the entrance fee is calculated.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.030, 101.050 & 101.080

Hist.: SDSL 5-1999, f. 4-30-99, cert. ef. 5-1-99; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0060

Reserve Requirements

(1) A provider must establish and maintain at all times:

(a) A debt service liquid reserve in an amount equal to or exceeding the total of all principal and interest payments due during the next 12 months on account of a mortgage loan or other long term financing of the CCRC taking into consideration any anticipated refinancing; and

(b) An operating liquid reserve in an amount equal to or exceeding the total of the CCRC's projected operating expenses for three months. For the purpose of calculating the amount required for the operating liquid reserve, projected operating expenses include any anticipated expenses associated with providing housing or health related services included under all the residency agreements.

(2) If the provider does not meet the reserve requirements, the Division may require the provider to place the reserves in an escrow account.

(3) The division may allow withdrawal or borrowing from the reserves in an amount not greater than 20 percent of the provider's total required reserves.

(a) The Division shall only approve the borrowing or withdrawal if required:

(A) For making an emergency repair or replacement of equipment;

(B) To cover catastrophic loss that is not able to be covered by insurance; or

(C) For debt service in a potential default situation.

(b) No withdrawal or borrowing may be made from the reserves without the approval of the Division except upon a court order.

(c) All funds borrowed from the reserves must be repaid to the reserves within 18 months in accordance with a payment plan approved by the Division.

(4) The reserve requirement statement must identify:

(a) The total of all principal and interest payments due during the provider's previous fiscal year including any mortgage loans or other long-term financing;

(b) Any anticipated refinancing and any change in principal and interest payments expected during the next 12 months;

(c) The amount of liquid reserves maintained by the provider; and

(d) Three months projected operating expenses. A provider must determine the three months projected operating expenses by taking the provider's previous year's audited financial statement and adding any projected increases or decreases in expenses for the next year, excluding depreciation and payments on long-term financing.

(5) New providers must determine their three months projected operating expenses by estimating their start-up, marketing, and personnel costs for the year of operation and divide the total costs by four. The projected budget must be provided to the Division. New providers must also submit an audited financial statement to the Division.

(6) Registered providers who build, purchase, or operate a new facility must immediately meet the full reserve requirements for that facility.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.060

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Hist.: SSD 9-1990, f. & cert. ef. 3-26-90; SDDS 5-1999, f. 4-30-99, cert. ef. 5-1-99; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0065

Provider Liquidation

If the provider is liquidated, the claims of the residents arising under residency agreements must be preferred claims that have priority over other unperfected claims against the provider's assets.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.065

Hist.: SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0070

Escrow Accounts

(1) ESCROW ACCOUNT REQUIRED. Prior to the Division issuing a certificate of registration to a provider for a new CCRC or new CCRC facility, the provider must establish an escrow account with a bank, trust company, or licensed escrow agent. A provider, otherwise in compliance with these rules, may not be required to establish an escrow account if the provider constructs one or more new physical structures, remodels, or expands on an existing CCRC facility on the same or adjacent site.

(a) The provider must directly deposit all entrance fees into the escrow account upon receipt. Entrance fees must be deposited into the escrow account prior to a resident being allowed to occupy the living unit in the new CCRC or new CCRC facility.

(b) The provider must maintain a current list that identifies the name and address of each individual who paid the entrance fee and the amount paid.

(2) ESCROW INSTRUCTIONS FILED WITH AGENT. Written escrow instructions that apply to all funds deposited into the escrow account must be filed with the escrow agent and include the following requirements:

(a) Funds in the escrow account must be placed in an interest-bearing account.

(b) Funds in the escrow account must be released to the provider only after the escrow agent receives a court order or a written authorization from the Division that the provider has complied with the requirements of ORS 101.070 and this rule. If the funds are authorized to be released to the provider by the Division, the accumulated interest must be paid to the provider or as otherwise directed by a court, and the provider shall be responsible for paying the escrow fee.

(c) An entrance fee that has been deposited in the escrow account and earned interest, less a proportionate share of the escrow fee, must be released to the individual who paid the entrance fee upon written authorization from the provider that the individual is entitled to a refund of the entrance fee. The written authorization must contain the name and address of the individual entitled to the refund and the amount of the entrance fee paid by the individual.

(d) If all entrance fees have not been released by 36 months after the date the escrow account is established, all entrance fees in the account and earned interest, less a proportionate share of the escrow fee, must be returned to the individuals who paid the entrance fees, unless the Division notifies the escrow agent in writing, prior to the 36 months, that an extension has been granted. The written notice of extension from the Division shall contain additional instructions for the escrow agent.

(3) ESCROW AGREEMENT. A copy of the escrow agreement must be submitted to the Division as described in OAR 411-067-0050.

(4) RELEASE OF FUNDS:

(a) Upon written request by the provider on a form prescribed by the Division, the Division shall approve the release of funds from escrow if the Division is satisfied that:

(A) The provider has received a certificate of occupancy by local authorities and has collected no less than 10 percent of entrance fees for each resident for no less than 50 percent of the total number of units;

(B) Anticipated proceeds of any first mortgage loan or other long term financing commitment plus funds from other sources in the actual possession of the provider are equal to not less than:

(i) 50 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the CCRC; and

(ii) 50 percent of the funds that the provider estimated in the disclosure statement as described in OAR 411-067-0050, to fund start-up losses of the CCRC; and

(C) A commitment has been received by the provider for any permanent mortgage loan or other long term financing commitment disclosed in OAR 411-067-0050 and any conditions of this commitment, prior to disbursement of funds, have been substantially satisfied other than completion of the construction or closing of the purchase of the CCRC.

(b) The Division shall review the request within 30 days and issue an order accepting or rejecting the request.

(A) If the Division approves the request, the Division shall notify the provider.

(B) If the Division rejects the release of escrow accounts:

(i) The Division shall issue an order rejecting the request. The order shall include the findings of fact upon which the order is based.

(ii) The provider may request a contested case hearing pursuant to ORS chapter 183 within 20 days after the date of the order.

(c) The provider may apply to the Division for an extension of time for the escrow account to remain open. The request for an extension must be made in writing to the Division before the 35th month after the date the escrow account was opened.

(A) The provider's request for an extension must contain documentation that demonstrates the requirements of subsection (4)(a) of this section may be met within 60 additional days and that a majority of the individuals, who have paid entrance fees that were deposited in the escrow account, have consented in writing to a 60-day extension. The provider's request for an extension must meet the requirements of this section or the request may not be considered to be timely.

(B) The Division shall review all timely requests for extension within 14 days of the receipt of the request. If the Division grants an extension, the Division shall send a notice of extension to the escrow agent.

(d) If the funds in the escrow account have not been released by 35 months after the date the escrow account was opened, the provider must deliver a copy of the list required by section (1)(b) of this rule to the escrow agent.

(e) In the event a prospective resident withdraws from the residency agreement prior to occupancy, the entrance fee may not be refunded to the prospective resident until the prospective resident's unit has been resold by the provider.

(f) If the entrance fees in an escrow account are not released within 48 months after the escrow account is opened, the entrance fees paid, less the escrow fee, must be returned to the resident unless an extension is granted by the Division.

(g) The escrow agent may return the entrance fee held in escrow to the individual who paid the entrance fee, upon receipt of notice from the provider that the individual is entitled to a refund of the entrance fee.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.070

Hist.: SSD 9-1990, f. & cert. ef. 3-26-90; SDDS 5-1999, f. 4-30-99, cert. ef. 5-1-99; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0080

Transfer of Ownership

(1) A certificate of registration is not transferable.

(2) A registered provider who wishes to sell, transfer ownership, or lease any CCRC or CCRC facility must obtain approval from the Division. The Division shall grant approval when the requirements of sections (3) and (4) of this rule have been met.

(3) Prior to taking over ownership or operation of the CCRC or CCRC facility, the purchasing provider must obtain a certificate of registration as described in OAR 411-067-0020.

(4) If the purchasing provider already has a certificate of registration, then the purchasing provider's certificate of registration must be amended to include the newly purchased CCRC or CCRC facility prior to taking over ownership or operation of the newly purchased CCRC or CCRC facility.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.100

Hist.: SSD 9-1990, f. & cert. ef. 3-26-90; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0083

Resident Meetings and Notice of Changes

(1) The governing body or a designated representative of the provider must hold meetings with the residents' council (Council) or all residents of the CCRC at least twice a year for the purpose of free discussion of subjects that may include but are not limited to facility income, expenditures, financial trends, resident concerns, and proposed changes in policy, programs, fees, and services.

(a) The meetings must be open to the designated personal representatives of the residents.

(b) The provider must present for discussion any issue the Council or any resident of the CCRC identifies orally or in writing 14 days or more prior to the meeting. Any issue presented for discussion must be of general concern to the CCRC and must be communicated to the individual as set forth by CCRC policy.

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(c) The CCRC must report the dates of the meetings in the annual disclosure statement.

(2) The provider must give residents at least 45 days notice of proposed changes in fees, regular periodic charges, or services. The provider must allow residents a reasonable opportunity to comment on the proposed changes before the changes become effective.

(3) At least 30 days before an increase in regular periodic charges takes effect, the provider must hold a meeting with the Council or a meeting that is open to all residents of the CCRC to present the reasons for the proposed increase and any data supporting the need for the increase. A meeting as described in section (1) of this rule may be used for this purpose.

(a) At least 14 days prior to the meeting, the provider must post in a conspicuous location and make available to each resident an agenda for the meeting.

(b) At the meeting, the provider must make available an accounting of:

(A) Actual and projected income and expenses for the CCRC's current fiscal year;

(B) Projected income and expenses for the following fiscal year; and

(C) The current rates for each living unit in the CCRC and each proposed rate increase. For this rule, "each living unit" means each type of living unit in contrast to every individual unit within the CCRC.

(4) A provider must review the CCRC budget with the Council or a committee appointed by the Council during the budget planning process.

(5) At least twice a year, the provider must make available, to the Council or a committee appointed by the Council, a financial statement for the CCRC that compares actual costs to budgeted costs, broken down by expense category.

(6) The governing body of a provider must allow at least one resident, from each CCRC operated by the provider in Oregon, to participate as a nonvoting resident representative on the governing body or along with the owners or managers.

(a) The resident representative may be excluded from any executive session and from discussion of confidential matters or matters related to litigation, personnel, competitive advantage, or a resident's personal affairs.

(b) The resident representative may not be excluded from discussion of matters relating to the annual budget, increases in regular periodic charges, provider indebtedness, or expansion in new or existing CCRC facilities.

(c) The resident representative and the resident representative's alternate must be elected by a majority vote of the Council of each CCRC or by a majority vote of all residents of the CCRC. The provider may establish the term for the representatives and the procedures for election and replacement of a representative and an alternate. The resident representative is responsible for submitting their name, address, electronic mail address, and telephone number to the provider.

(d) A provider must send the notice of the meeting and any written materials relevant to the discussions in which the resident representative may participate under this section, to each resident representative and alternate, at the same time and in the same manner as the governing body, owners, or managers.

(e) A provider must pay all reasonable travel expenses for a resident representative or alternate to attend meetings of the governing body and meetings of the governing body's committees.

(7) A provider must maintain and make available to any resident upon request, minutes of the meetings of the provider's governing body. A provider must retain the minutes for no less than three years from the date the minutes were created.

(a) The provider may remove from the minutes, information regarding any matters discussed in executive session or that relate to litigation, personnel, competitive advantage, or a resident's personal affairs.

(b) The provider may not remove from the minutes, information regarding the annual budget, increases in regular periodic charges, provider indebtedness, or expansion in new or existing CCRC facilities.

(8) Nothing in this rule prohibits a provider from allowing greater resident participation than the minimum requirements set forth in these rules.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.112

Hist.: SDSL 5-1999, f. 4-30-99, cert. ef. 5-1-99; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0086

Resident Rights

(1) A provider must assist a resident, upon request, in the exercise of the resident's rights as a citizen of the United States and as a resident of Oregon. A resident has the right to exercise all rights that do not infringe upon the rights or safety of other residents.

(2) A resident has the right to review a provider's disclosure statements.

(3) A provider may not discriminate or impose any requirement or restriction based on sex, marital status, race, color, sexual orientation, or national origin of a resident, a prospective resident, or a resident's visitor.

(4) A provider must make reasonable accommodations to ensure that services are accessible to residents who have disabilities.

(5) A provider must treat each resident with respect and dignity at all times and ensure privacy for each resident during rehabilitation or treatment and when receiving personal care services.

(6) A resident has the right to associate and communicate privately with persons of the resident's choice and to send and receive mail that is not opened by the provider.

(7) A resident has the right to be free from abuse as defined in ORS 124.005 and OAR 411-020-0002.

(8) The Resident Council has the right to meet with the provider as described in OAR 411-067-0083.

(9) A resident has the right to participate in social, religious, and community activities at the discretion of the resident.

(10) A resident has the right to be fully informed, prior to or at the time of admission and during the resident's period of residency, of services available in the CCRC, whether the provider participates in the Medicare or Medicaid programs, and the consequences of the participation or lack of participation by the provider in the Medicare or Medicaid programs.

(11) A resident has the right to refuse medication, treatment, care, or participation in clinical trials or other research.

(12) A resident has the right to obtain treatment, care, and services including but not limited to home health and hospice care, from persons providing health care who have not entered into a contract with or are not affiliated with the provider, subject to policies of the CCRC regarding the provision of services by persons that are not under contract.

(13) A resident has the right to submit grievances and to suggest changes in policies and services either orally or in writing to staff or other individuals without fear of restraint, interference, coercion, discrimination, or reprisal by the provider. A provider must listen to and respond promptly to a grievance or suggestion from a resident.

(14) A resident has the right to be free from harassment by other residents and to peaceful enjoyment of the CCRC without interference from other residents.

(15) A provider must keep clinical and personal records of residents confidential. A resident or the resident's representative has the right to a prompt inspection of the records pertaining to the resident's care. The provider must provide photocopies or electronic copies of a resident's records to the resident or the resident's representative at a reasonable charge.

(16) A resident has the right to receive at least 45 days prior notice of proposed changes in fees or services. The provider must allow residents a reasonable opportunity to comment on the proposed changes before the changes become effective.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.115

Hist.: SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0090

Complaints, Investigations and Remedies

(1) INVESTIGATIONS REQUIRED. The Division shall investigate all complaints made regarding violations of the CCRC Act, these rules, or orders adopted under the Act.

(a) Division staff or representatives of the Division shall carry out investigations as soon as practicable.

(b) The Division may interview pertinent witnesses including employees of the provider and review the provider's documents and records.

(c) Except as prohibited by the Elderly Persons and Persons with Disabilities Abuse Prevention Act, ORS chapter 124, the Division shall notify the provider within seven working days of any complaint and the provider shall be given an opportunity to respond.

(d) The provider must make the documents and records requested under subsection (b) of this section available to the Division for review and copying.

(e) The provider is responsible for violations of the Act, these rules, or orders adopted under the Act committed by the provider's employees, subcontractors, or agents.

(2) INTERVENTION BY THE DIVISION:

(a) The Division may issue a cease and desist order or revoke a provider's certificate of registration if, after notice and an opportunity for a

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contested case hearing pursuant to ORS chapter 183, the Division finds the provider guilty of violating any provision of the Act, these rules, or orders adopted under the Act.

(b) The Division may issue a cease and desist order or apply for injunctive relief or a temporary restraining order if it appears a person has engaged, or is about to engage, in an act or practice that constitutes a violation of any provision of the Act, these rules, or orders adopted under the Act.

(c) The Division may issue a cease and desist order for a violation of the Act, these rules, or orders adopted under the Act committed by the provider's employees, subcontractors, or agents. The order shall be issued to the provider and, when deemed appropriate by the Division, to the persons who violated the Act, these rules, or orders adopted under the Act.

(3) RETALIATION PROHIBITED. The provider may not take any retaliatory action against any complainant, including but not limited to the management, staff, and residents of the provider's CCRC facilities.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.110 & 101.120

Hist.: SSD 9-1990, f. & cert. ef. 3-26-90; SDSL 5-1999, f. 4-30-99, cert. ef. 5-1-99; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

411-067-0100

Promotional Material

(1) PROHIBITION REGARDING ENDORSEMENT CLAIM. A provider may not advertise, represent, or imply that a CCRC has been inspected or approved by the State of Oregon or the Division.

(2) FEE SCHEDULE. All copies of the provider's fee schedule must state that a copy of the annual disclosure statement is available upon request.

(3) OUT-OF-STATE PROVIDER. An organization advertising CCRC services provided in another state may advertise in Oregon without being registered in Oregon only if the advertisement clarifies the state or other government entity through which the organization is licensed or registered.

Stat. Auth.: ORS 101.150 & 410.090

Stats. Implemented: ORS 101.150

Hist.: SDSL 5-1999, f. 4-30-99, cert. ef. 5-1-99; SPD 8-2011, f. 3-31-11, cert. ef. 4-1-11

Department of Justice

Chapter 137

Rule Caption: Modify the Child Abuse Multidisciplinary Team and Regional Service Provider OARs to align with ORS changes from 09-11 biennium and alignment of language to current terminology.

Adm. Order No.: DOJ 2-2011

Filed with Sec. of State: 3-30-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 3-1-2011

Rules Amended: 137-082-0210, 137-082-0220, 137-082-0230, 137-082-0240, 137-082-0250, 137-082-0260, 137-082-0270, 137-082-0280, 137-083-0000, 137-083-0010, 137-083-0020, 137-083-0040, 137-083-0050

Subject: Align with ORS changes from the 09-11 biennium;

Change Child Abuse Centers to Child Abuse Intervention Centers;

Change Regional Training and Consultation Center to Regional Service Providers;

Include moving application and reporting to web-based CVSD E-Grant system;

Modify reporting requirements to minimize and consolidate reporting.

Rules Coordinator: Carol Riches—(503) 947-4700

137-082-0210

Definitions

(1) "Advisory Council on Child Abuse Assessment", referred to hereafter as "the Council", is a legislatively authorized council (ORS 418.784) of at least nine members appointed by the Attorney General or Attorney General's designee to advise the Child Abuse Multidisciplinary Account Administrator. For the purpose of these rules, Child Abuse Advocacy Centers is referred to as "Child Abuse Intervention Centers". The Council collaborates with the Administrator of the CAMI Account on the disbursement of moneys to establish and maintain community or regional child abuse intervention centers and advises the CAMI Administrator on the disbursement of monies to the multidisciplinary teams.

(2) "Advocacy Services" means those services that reduce additional trauma to the child victims and their families in addition to services that

reduce the trauma for the child victim and support the identification and development of therapeutic services.

(3) "Applicant," as used in OAR 137-082-0200 et seq., means the county and the public and private agencies recommended by a county's multidisciplinary child abuse team to provide services in accordance with the county's coordinated child abuse multidisciplinary intervention plan.

(4) "Assessment Services" means a medical assessment, intervention service or psycho-social assessment of children suspected of being victims of abuse and neglect.

(5) "Child Abuse Multidisciplinary Intervention Account", referred to hereafter as the "CAMI Account". The CAMI Account holds funds appropriated by the Legislative Assembly to the Oregon Department of Justice. The funds are to be disbursed to counties, for the counties' funding of "multidisciplinary child abuse teams" formed under ORS 418.784, and to public and private agencies recommended by a county's multidisciplinary child abuse team to provide services in accordance with the county's coordinated child abuse multidisciplinary intervention plan.

(6) "Conditional Eligibility" is the conditional approval of the program proposed by the applicant for carrying out the county's coordinated child abuse multidisciplinary intervention plan.

(7) The coordinated child abuse multidisciplinary intervention plan, set forth at ORS 418.746(5) and referred to hereafter as "the Plan", sets forth all sources of funding, other than moneys that may be distributed from the child abuse multidisciplinary intervention account, and including in-kind contributions that are available for the intervention plan; describes how the Plan provides for comprehensive services to the victims of child abuse, including assessment, advocacy and treatment; and includes the county's written protocol and agreements required by 418.747(2).

(8) "County Multidisciplinary Child Abuse Team", referred to hereafter as the "MDT" or "Team", is a county investigative and assessment team for child abuse. Pursuant to ORS 418.747(1), the Team must include, but is not limited to, law enforcement personnel, child protective services workers, district attorneys, school officials, health department staff and personnel from the courts.

(9) "The Department" is the Oregon Department of Justice.

(10) "Eligible Expenses" means personnel costs for staff, interviewers, interpreters, and expert witnesses; services and supplies, rent, capital purchases, and other operational expenses related to providing assessment, advocacy, or treatment services. The county with whom the Department contracts may request 5% of the county CAMI Account funds for administration. This must have the approval of the county multidisciplinary team and be included in the Plan.

(11) "Grantee" means an Applicant whose grant application has resulted in as received a grant award, which is reflected in a "Grant Agreement".

(12) Ineligibility Determination — is a finding by the Account Administrator that a county is ineligible to receive funding from CAMI.

(13) Intervention Advocacy — activities identified at the local and state level to provide more effective intervention for victims of abuse and neglect.

(14) Intervention Services - services provided by criminal justice or child protective services staff to effectively intervene in cases of suspected child abuse.

(15) Medical Assessment as defined in ORS 418.782(2) — the medical assessment is an assessment by or under the direction of a physician who is licensed to practice medicine in Oregon and trained in the evaluation, diagnosis and treatment of child abuse. The medical assessment must include a thorough medical history, a complete physical examination, an interview for the purpose of making a medical diagnosis, determination of whether or not the child has been abused, and identification of the appropriate treatment or referral for follow-up for the child.

(16) Prevention Advocacy — activities associated with local and state fatality review processes and/or subsequent prevention strategies to reduce abuse, neglect or fatalities.

(17) Professional Training and Education — support for professional training and educational resources such as a clearinghouse, speaker's bureau, or library; ongoing training and education for professionals involved in child abuse and neglect intervention.

(18) Protective Services - activities that are required to protect the child, prevent future abuse, and support the healing process associated with the abuse related trauma.

(19) Psycho-Social Assessment — evaluates the child's and the family's needs for services and the availability of resources to meet those needs.

(20) "Treatment" means those services that provide for the medical and psychological needs of the victim or the victim's family members. For

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the purposes of this rule, treatment is intended to refer to short-term, crisis-oriented treatment.

(21) "Treatment Services" means information, referral, and therapeutic interventions for child abuse victims and their families.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624

Stats. Implemented: ORS 418.746 - 418.794

Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0220

Eligibility

(1) To be eligible for funds an Applicant, through its multidisciplinary child abuse team, must submit a Plan as described in ORS 418.746(5). The Plan must be submitted with any application for CAMI Account funds and must describe how the county will provide for comprehensive services for victims of child abuse or children suspected of being victims of child abuse. In describing the nature of the comprehensive services that will be available, the Plan must address assessment, advocacy and treatment services as defined by subsection (2)(c) of this rule.

(2) To receive a grant award, an Applicant must:

(a) Meet the requirements of ORS 418.746 and OAR 137-082-0200 through 137-082-0280;

(b) Demonstrate existence of a functioning multidisciplinary team responding to allegations of child abuse pursuant to ORS 418.747;

(c) Submit an application to the Department which includes a Plan that meets all requirements of ORS 418.746(5)(a) and this administrative rule. The application must clearly state protocols as requested in the application, goals, objectives, and desired outcomes that further the purposes of 418.747, 418.780, 418.790 and 418.792. The portion of the Plan that will be supported by the CAMI Account funds must provide for services in one or more of the service categories (A), (B) or (C) listed below, in addition to the fourth category, (D) Eligible Expenses associated with the provision of services. Each application must clearly state the service category, services intended to be provided, the expenses associated with the services, measurable objectives, and desired outcomes.

(A) "Assessment Services" includes the following:

(i) Medical Assessment -The medical assessment must include a thorough medical history, a complete physical examination, an interview for the purpose of making a medical diagnosis, determination of whether or not the child has been abused, and identification of the appropriate treatment or referral for follow-up for the child;

(ii) Psycho-Social Assessment;

(iii) Intervention Services;

(B) "Advocacy Services" includes the following:

(i) Advocacy Services;

(ii) Protective Services;

(iii) Intervention Advocacy;

(iv) Prevention Advocacy;

(v) Professional Training and Education.

(C) "Treatment Services" includes the following:

(i) Providing information regarding available treatment resources;

(ii) Referral for therapeutic services;

(iii) Providing and coordinating therapeutic treatment intervention.

(iv) Provided all requirements specified above have been satisfied, an Applicant must enter into a Grant Agreement in the form approved by the Department.

(D) "Eligible Expenses" includes personnel costs for staff, interviewers, interpreters, and expert witnesses; services and supplies, rent, capital purchases, and other operational expenses related to providing assessment, advocacy, or treatment services. The county with whom the Department contracts may request 5% of the county CAMI Account funds for administration. This must have the approval of the county MDT and be included in the Plan.

(3) Conditional Eligibility

(a) If an applicant submits a program application that fails to meet all of the Plan requirements, the applicant will be asked to submit a revised Plan as requested by the Department that will bring the applicant into compliance with the Plan program requirements. If this Plan is approved by the Department, then the Department may award funds to the applicant. A Plan must be approved by the Department before to an Applicant is eligible to receive funds.

(b) Failure to use the CAMI Account funds in accordance with the Plan approved by the CAMI Account Administrator may result in an applicant being given notice of conditional eligibility or notice of denial for future funding until such time as corrective actions have been taken which have been approved by the Account Administrator.

(4) Ineligibility Determination — An application may be deemed ineligible and funds may be denied if an applicant:

(a) Fails to provide verification of an ongoing, fully functioning county multidisciplinary child abuse team;

(b) Fails to provide verification of an ongoing child fatality review process as described under ORS 418.747(8)-(13);

(c) Fails to submit an approved Plan;

(d) Fails to submit the required program, fiscal or other reports as specified by ORS 418.746(7) and in OAR 137-082-0250 or as requested by the Department;

(e) Fails to provide a corrective action plan if requested to do so by the CAMI Account Administrator;

(f) Fails to expend the CAMI Account funds in accordance with the Plan approved by the CAMI Account Administrator; or

(g) Fails to meet any of the other conditions specified in ORS 418.746, 418.747, or OAR 137-082-0200 through 137-082-0280.

(5) If a county does not expend all of its allocated funds for year one of the grant period, it must explain in the annual report why the funds were not expended and how they will be incorporated into the second year's Plan, in order to maintain the county's eligibility. If in the judgment of the Account Administrator a sufficient explanation has been provided, the carry-over funds may become part of that second year's comprehensive plan.

(6) Pursuant to subsection (5) the Account Administrator may in his or her discretion permit an Applicant to retain unexpended funds provided to grantee under a contractual agreement entered into pursuant to OAR 137-082-0200 et seq. Such retention of funds must be implemented through a subsequent contractual agreement with the grantee.

(7) If a significant carry-over of funds continues for more than one year, the county will be asked to reevaluate its Plan and make necessary adjustments to utilize the funds. If there continues to be significant carry-over of funds without reasonable plans approved by the CAMI Administrator for their use, the county's allocation for future funding may be reduced by the amount of excess funds or carryover may be applied to the county's next year's allocation if approved by the Department.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624

Stats. Implemented: ORS 418.746 - 418.794

Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0230

Notice and Time Limits on Application

(1) The Department will send application materials to a designated representative of the county's MDT on a biennial basis. Applicants with a history of compliance with all eligibility and reporting requirements for a period of at least 4 years, may, at the discretion of the CAMI Account Administrator be provided an abbreviated bi-annual application that will certify continued compliance with eligibility along with any updated information that is necessary or requested by the CAMI Account Administrator.

(2) Eligibility will be determined biennially based upon review by the Advisory Council on Child Abuse Assessment and the CAMI Account Administrator. A request for application and continued eligibility will be determined by the CAMI Account Administrator through review of the annual report.

(3) If the Advisory Council on Child Abuse Assessment or CAMI Account Administrator finds deficiencies in the application, the applicant will be informed through the Crime Victims' Services Division (CVSD) E-Grant system to make specified modifications. The applicant must submit the requested modifications to its application to correct these deficiencies before a CAMI Grant Agreement will be issued. The CAMI Account Administrator will issue a CAMI Grant Agreement upon approval of the modified application or issue a denial with any additional terms deemed necessary for the modified application to receive approval.

(4) If a requested revised Plan is not submitted within the designated timeframe assigned by DOJ, the applicant will be declared ineligible. The funds designated for that county will be reallocated to other eligible applicants as per OAR 137-082-0280.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624

Stats. Implemented: ORS 418.746 - 418.794

Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0240

Transfer of Funds

(1) Upon approval of the application, and following the grant award, the Department will enter into a Grant Agreement with the county or the public and private agencies, recommended pursuant to ORS 418.746(5) and (6) and approved by the Department, or any of the foregoing. The Department will disburse funds in accordance with the Grant Agreement.

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The Department will not purchase services directly from a local service provider.

(2) A percentage of the Criminal Fines and Assessment Public Safety Fund CAMI Account appropriation will be reserved for each county based upon a biennial calculation that takes into account numbers relating to population under age 18 and crime rates for the county. Any unclaimed funds will be reallocated in accordance with OAR 137-082-0280.

(3) General Fund allocation — Will be allocated through the same process under OAR 137-082-0240(2).

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624

Stats. Implemented: ORS 418.746 - 418.794

Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0250 Report

(1) The County's Semi-annual Statistical and Quarterly Fiscal Reports. The chair of each county's MDT is responsible for the Team's submission of an annual progress report. The county must provide to its' MDT any information requested by the Team if such information is necessary to be in compliance with the CAMI Account reporting requirements set forth in ORS 418.746(7) and OAR 137-082-200 et seq. The reports shall be in the form specified by the Department. The reports must document how the grant funds were utilized and the extent to which the programs were able to meet anticipated outcomes in terms of benefits to children and families. This information will be used to determine eligibility for future funding. To adequately prepare these reports, the county should include, as part of each biennial application, desired program outcomes, a description of the measurable objectives to be achieved in each service category and the data that will be used to measure the progress of the program towards the desired outcomes.

(2) The biannual reports shall address the following areas:

(a) Statements of Purpose, Objectives, Goals of Project or Activity;

(b) Problems or barriers that arose during the reporting year and how these were addressed;

(c) Results, Accomplishments, and Evaluations: This must include the data used to measure success towards outcomes and objectives as stated in the application;

(d) Conclusions and any recommendations; and

(e) Any additional information requested by the Department.

(3) Failure to submit the required reports by the due date will result in the county being placed on conditional eligibility status for any future funds. The county will be given written notice of this action. No further funds will be disbursed until the Department receives the required report.

(4) Submitting false or misleading information will result in denial of further funding until the county demonstrates that problem areas are identified and corrected. The applicant will be given written notice of this action.

(5) The Public or Private Agency's semi-Annual and Quarterly Fiscal Reports. An agency that is awarded money under these rules must submit reports to the county MDT and to the Department. The reports must document how the money was utilized and describe the extent to which the program was able to meet anticipated outcomes in terms of benefits to children and families. County MDTs receiving reports from a public or private agency under these rules must use the report in making future recommendations regarding allocation of moneys. The Department will use the public or private agency's reports to make future eligibility and allocation decisions and to evaluate programs funded under these rules.

(6) The public or private agency's reports shall address the following areas:

(a) Statements of Purpose, Objectives, Goals of Project or Activity;

(b) Problems or barriers that arose during the reporting year and how these were addressed;

(c) Results, Accomplishments, and Evaluations: this must include the data used to measure success towards outcomes and objectives as stated in the application;

(d) Conclusions and any recommendations; and

(e) Any additional information requested by the Department.

(7) Failure to submit the required report by the due date will result in the public or private agency being placed on conditional eligibility status for any future funds. The public or private agency will be given written notice of this action. No further funds will be disbursed until the Department receives the required report.

(8) Submitting false or misleading information will result in denial of further funding until the public or private agency demonstrates that problem areas are identified and corrected to the satisfaction of the Department. The public or private agency will be given written notice of this action.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624

Stats. Implemented: ORS 418.746 - 418.794

Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0260

Method of Review/Role of Advisory Council

(1) Staff from the CVSD will review each county's application and each recommended public or private agency's application. A committee comprised of members of the Advisory Council on Child Abuse Assessment, and other members as may be appointed by the Department, will review and submit to the Department a recommendation regarding approval of each county's Plan the county's application for funding and each county's recommended public or private agency application for funding if any. The committee will determine if the application:

(a) Meets the established eligibility requirements;

(b) Responds to the county's needs as identified in their Plan for comprehensive services to the victims of child abuse;

(c) Substantially furthers the goals and purposes of ORS 418.747, (418.780,) 418.790, and 418.792; and

(d) Documents proper allocation of previous funds and the extent to which anticipated outcomes were achieved for children and families.

(2) The final responsibility for approval, conditional eligibility approval or denial shall rest with the Department.

(3) Formal notification of approval, conditional approval or denial will be given to counties and county recommended public or private agencies in a timely manner.

(4) The Department and Advisory Council may, at any time, conduct a site visit, and may review any records relating to the provision of services and expenditure of funds under this project. All information and records pertaining to individual families and children, reviewed by the Department or a designated body in the exercise of its duties related to the CAMI program, shall be maintained in accordance with the provisions of law, and the terms of applicable Grant Agreements. The information and records will be treated as confidential records by such parties, except to the extent that permission is provided by the affected parties, or as the law may otherwise require.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624

Stats. Implemented: ORS 418.746 - 418.794

Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0270

Grievance Procedures

(1) Applicants have a right to a review of decisions regarding their conditional eligibility or denial of eligibility for CAMI funds.

(2) Each Applicant will be informed of the procedure for review, ("grievance procedure") at the time a decision is made regarding an Applicant's eligibility for CAMI funds.

(3) No Applicant will be subject to reprisal for seeking a review of a decision regarding conditional eligibility or denial of eligibility for CAMI funds.

(4) To invoke this grievance procedure, an Applicant must make a written request to the CAMI Account Administrator within 30 days after receiving notification of the conditional eligibility or denial.

(5) When the Department is notified that an Applicant has timely filed a grievance regarding conditional eligibility or denial of eligibility for CAMI funds, a meeting will be scheduled with the CAMI Account Administrator. This meeting will involve the applicant and other members of the county's MDT as the Applicant deems necessary to present its case. The CAMI Account Administrator and members of the Advisory Council may be present at this meeting. Every effort will be made to have this meeting occur within 2 weeks of receipt of the grievance.

(6) If the matter is not resolved through the grievance procedure, the applicant may request a review of the issue by the Director of the CVSD. The Applicant must make a written request to the Director of the CVSD within 30 days following notification of the results of meeting with the CAMI Account Coordinator.

(7) The Director of the CVSD shall respond in writing to the Applicant's request for review within 30 days. If this response does not resolve the matter the Applicant may request an administrative review by the State Attorney General. Request for such a review shall be made in writing to the State Attorney General and shall include a statement of the problem and the desired resolution. Written notice of intent to pursue administrative review by the Attorney General shall be provided to the Director of the CVSD before or concurrently with the written request that is submitted to the Attorney General. To be eligible for review by the Attorney General, this request must be made within 30 days of receipt of written notification of the decision of the Director of the CVSD. The decision of the State Attorney General is final.

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Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-082-0280

Reallocation of Funds Not Applied for or Used

(1) CAMI funds that were not allocated due to an Applicant's failure to request its CAMI funds, or an Applicant's failure to submit a complete application, or a satisfactory Plan or failure to enter into a Grant Agreement, may be distributed to other eligible counties as a supplemental award. These funds will be offered to eligible counties on a percentage basis according to the allocation formula set forth in OAR 137-082-0240(2). As provided therein and OAR 137-082-0280, CAMI funds may be distributed in a manner that is similar to the disbursement formula used to distribute the Criminal Fines and Assessment Public Safety Fund with regard to prosecutor based victim assistant programs.

(2) If an application is submitted but approval is denied, the funds will be held in the CAMI Account for that county for 12 months from the date of denial, during which time the Applicant may reapply. If the Applicant has not obtained at least conditional eligibility within the 12 month period, the funds will be distributed to other eligible counties. If the grievance procedure is underway during the 12 month period, the Applicant's funds will be held in reserve until the final decision of the Attorney General or 12 months from the date of the notification of the denial of funding, whichever is longer. Any Applicant holding funds which are the subject of an eligibility determination grievance procedure, or notice regarding appropriate use of funds, may not encumber, alienate or expend those funds unless and until the grievance procedure is concluded in favor of the Applicant. Applicants holding funds which are ultimately determined to be ineligible for use under Applicant's Plan must return any and all grant funds to the Department within the timeframe established by the Department.

(3) It is the intention of the Department to have minimal or no unobligated CAMI funds at the end of each biennium. Funds held in the CAMI Account in accordance with the above rules will be considered obligated funds until all grievances and eligibility issues have been resolved.

Stat. Auth.: OL 1993, Ch. 676 & OL 2001, Ch. 624
Stats. Implemented: ORS 418.746 - 418.794
Hist.: DOJ 5-2002, f. 7-31-02, cert. ef. 8-1-02; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-083-0000

Purpose

These rules establish criteria for awarding grants to establish and maintain Regional Assessment Centers or Community Assessment Centers pursuant to ORS 418.786. These rules also define the services offered by Regional Assessment Centers and Community Assessment Centers, standards relating to complex cases, and grievance procedures regarding the criteria for awarding grants.

Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796
Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-083-0010

Definitions

As used in OAR chapter 137, division 083:

(1) "Multidisciplinary Child Abuse Team (MDT)" means the interdisciplinary investigation team established in each county by ORS 418.747.

(2) "Complex Case" means a case in which the local Child Abuse Intervention Center (CAIC) or the local Multidisciplinary Child Abuse Team (MDT) determines the need for assistance from a Regional Service Center or Community Assessment Center, in order to perform or complete a child abuse medical assessment or to evaluate, diagnose or treat a victim of child abuse.

(3) "Consultation" means discussions between or among persons associated with a Regional Service Center or Community Assessment Center and persons associated with county Multidisciplinary Teams to be served by the Center regarding individual cases involving child abuse or possible child abuse, child abuse medical assessments, and related topics.

(4) "Education" means the provision of specialized information to individuals regarding the detection, evaluation, diagnosis and treatment of child abuse or possible child abuse.

(5) "Referral Services" means the recommendation of specialized services related to child abuse medical assessments or to the detection, evaluation, diagnosis or treatment of child abuse. It may include consultation or directing or redirecting a child abuse victim or possible victim to an appropriate specialist for more definitive evaluation, diagnosis or treatment.

(6) "Technical Assistance" means assistance of a practical, specialized or scientific nature, including but not limited to practical advice, specialized advice, advanced laboratory testing or forensic testing.

(7) "Training" means the provision of teaching or instruction to professionals regarding the detection, evaluation, diagnosis or treatment of child abuse or possible child abuse.

(8) "Community Assessment Service" means a neutral, child sensitive community-based center or service provider to which a child from the community may be referred to receive a thorough child abuse medical assessment for the purpose of determining whether the child has been abused or neglected. These services may be provided by assessment, advocacy, or intervention centers.

(9) "Regional Assessment Center" means a community based Child Abuse Intervention Center (CAIC) that is also providing training, education, consultation, referral, technical assistance, and may with the approval of the Department of Justice be providing specialized assessment services for children in multiple counties. For the purposes of these rules the Regional Assessment Center will be referred to as the Regional Service Providers (RSP) and may be referred to as RSP or Regional Service Provider throughout the rest of this document.

Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796
Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-083-0020

Application Requirements

(1) Eligible Applicants:

(a) An applicant for the RSP grant must be a public or private non-profit agency that has demonstrated the ability to provide quality child abuse intervention services for a period of at least two years, as determined by the Child Abuse Multidisciplinary Intervention Advisory Council;

(b) An applicant for the RSP grant must be a public or private non-profit agency whose mission includes the provision of services to victims of child abuse or neglect;

(c) An applicant for the RSP grant must have adequately trained staff to perform child abuse medical assessments and interviews including but not limited to a physician who is trained in the evaluation, diagnosis and treatment of child abuse and who is licensed to practice medicine in Oregon by the Oregon Medical Board; and an interviewer who has an advanced academic degree in human services or who has comparable specialized training and experience.

(2) Application Contents. An application for a Regional Service Provider grant must include the information specified in ORS 418.788(3), 418.790 (RSP applicants only) and ORS 418.792 (Child Abuse Intervention Center applicants) as well as the following:

(a) Service Delivery Plan:

(A) An in-depth description of how the Regional Service Provider will assure the provision of neutral, child-centered child abuse medical assessments for the purpose of determining whether a child has been abused or neglected;

(B) Documented support from constituent agencies and the local MDT. The constituent support must address the level of need for the services, and how that service will be accessed by community agencies or individuals;

(C) Goals, objectives and measurable outcomes for the projected funding period. The method by which the quality of services will be evaluated must be included in the service delivery plan;

(D) For RSP applicants, the service delivery plan must include the requirements set forth in ORS 418.790(1).

(b) For RSP applicants, information which demonstrates how and to what extent the applicant proposes to provide consultation, education, training and technical assistance to local MDT's, community assessment centers, and others as may be appropriate. A description of services shall include documentation demonstrating that potential recipients of any of the above services have been provided a reasonable opportunity to provide input into the proposed service delivery plan;

(c) For RSP applicants, a projected budget for the expenses associated with the provision of consultation, education, training, referral and technical assistance or other services as may be approved by the Department of Justice. Expenses may include, but are not limited to personnel, training, equipment, rent, supplies, travel, telephone or other communication charges. The budget for the services provided as a RSP must be clearly differentiated from those of the direct victim services provided as a Child Abuse Intervention Center;

(d) Any additional information requested by the CAMI Account Coordinator.

(3) Referral of Complex Cases. RSP's shall assure that they will provide access for CAICs and MDT's for referral of complex cases. RSP's, CAICs and MDT's shall have an agreement regarding how referrals and

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services may be made, who can make a referral, and if desired, more specificity regarding the definition of a complex case. The method for contacting the regional centers shall be updated as needed, and distributed by the CAMI Account Coordinator and RSPs, to all CAICs and MDT coordinators.

Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796
Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-083-0040

Performance of Duties

(1) Regional Service Providers receiving CAMI funds directly from the Department of Justice, shall submit reports that provide both qualitative and quantitative information regarding the delivery of services provided by the RSP as required by the Department.

(2) Failure to meet the conditions of the award including administration, fiscal and programmatic requirements, may result in a reduction or denial of subsequent funds.

Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796
Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

137-083-0050

Grievance Procedures

(1) An applicant has a right to review the award decision concerning eligibility and denial for an award for CAMI funds for the RSP grant. The grievance process is referred to herein as the "review" or "grievance procedure".

(2) Each applicant will be informed of the grievance procedure at the time a decision is made regarding an award decision concerning an applicant's application.

(3) No applicant will be subject to reprisal for seeking a review of an award decision.

(4) To request a review of the award decision the applicant must make a written request to the CAMI Account Coordinator within 30 days after receiving notification of the award decision.

(5) When the Department is notified that an applicant has requested a review of the award decision, a meeting will be scheduled with the CAMI Account Coordinator and members of the Advisory Council that have no conflict of interest with regard to the review at issue. Every effort will be made to have this meeting occur within 30 days of receipt of the grievance.

(6) If the matter is not resolved through the above described grievance procedure, the applicant may request a further review of the issue by the Attorney General or his designee. The applicant must make a written request for such a review, to the Director of the Crime Victims' Services Division within 30 days following notification of the results of meeting with the CAMI Account Coordinator and the Advisory Council.

(7) The decision of the State Attorney General or his designee is final.
Stat. Auth.: ORS 418.782 - 418.793
Stats. Implemented: ORS 418.780 - 418.796
Hist.: DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 2-2011, f. 3-30-11, cert. ef. 4-1-11

Rule Caption: Providing intergovernmental child support services.

Adm. Order No.: DOJ 3-2011(Temp)

Filed with Sec. of State: 3-31-2011

Certified to be Effective: 3-31-11 thru 9-26-11

Notice Publication Date:

Rules Amended: 137-055-1020, 137-055-1090, 137-055-1120, 137-055-1145, 137-055-3220, 137-055-3240, 137-055-3400, 137-055-3420, 137-055-4040, 137-055-4455, 137-055-4540, 137-055-5080, 137-055-5220, 137-055-5240, 137-055-6120, 137-055-7020, 137-055-7040, 137-055-7060, 137-055-7100, 137-055-7120, 137-055-7140, 137-055-7160, 137-055-7180, 137-055-7190

Rules Suspended: 137-055-7080

Subject: These rules are amended (one is suspended) to reflect changes in federal regulations concerning intergovernmental case processing. Additionally, language in existing rules is simplified for clarity.

Rules Coordinator: Vicki Tungate—(503) 989-6086

137-055-1020

Child Support Program Definitions

The following definitions apply to OAR 137-055-1040 through 137-055-7190:

(1) Unless otherwise stated, "administrator" means either the Administrator of the Division of Child Support of the Department of Justice

or a district attorney, or the administrator's or a district attorney's authorized representative.

(2) "Assignee" means the Department of Human Services (DHS), the Oregon Health Authority (OHA), the Division of Child Support, Oregon Youth Authority (OYA) or equivalent agencies in any other state or Tribe to which support rights for a person are assigned.

(3) "Assignment" or "Assigned" means all or a portion of support payments owed to a person will be kept by the state if the person or a beneficiary of the person is receiving Temporary Assistance for Needy Families (TANF) cash assistance, foster care, or OYA services. Support payments will be distributed as provided in OAR 137-055-6022. Additionally, if a person receives Title XIX medical assistance, medical support rights are assigned.

(4) "Beneficiary" means any child, spouse or former spouse for whom an obligor has been ordered (or has agreed) to pay support, under a court or administrative order, or a voluntary agreement.

(5) "Child Support Award" means a money award or administrative order that requires the payment of child support.

(6) "Child Support Program" or "CSP" is the program authorized under title IV-D of the Social Security Act to provide child support enforcement services required by federal and state law. The CSP director in Oregon is the Administrator of the Division of Child Support. The CSP includes the Division of Child Support and those district attorneys that contract to provide services described in ORS 25.080.

(7) "Class Order" means a support order for multiple children that does not specify an amount of support per child and requires the payment of the entire amount until the last child attains majority or until the order is prospectively modified.

(8) "Court Order" means any judgment or order of the court requiring an obligor to provide child or spousal and/or health care coverage, for specified beneficiaries.

(9) "Court ordered Amount", or "COA", means the periodic payment amount, usually monthly, ordered by the administrator, an administrative law judge or by a court for support. The COA can be either the amount for each beneficiary on a support case, or the total amount for all beneficiaries in a single support case.

(10) "Department of Human Services", or "DHS", is the state's health and human services agency. DHS is responsible for public assistance programs such as: TANF, Food Stamps, child-protective services, and foster care and adoption programs.

(11) "Disbursement" means dispensing or paying out collected support.

(12) "Distribution" means allocating or apportioning collected support.

(13) "District Attorney", or "DA", means the district attorney for an Oregon county responsible for providing services under ORS 25.080.

(14) "Division of Child Support", or "DCS", is the Division of Oregon's Department of Justice that is responsible for providing services under ORS 25.080.

(15) "Guidelines" refers to the guidelines, the formula, and related provisions established by DCS, in OAR 137-050-0705 through 137-050-0765.

(16) "Income Withholding" means a judicial or administrative process under which an obligor's employer, trustee, or other provider of income is ordered to withhold a specified percentage, or a specified amount, from each and every paycheck or benefit payment of an obligor, for the purpose of paying current and past due support. Income withholding is distinguished from garnishment as follows: income withholding will occur continuously under a single order and is not subject to claim of exemption; a garnishment occurs for only a limited duration under a single writ and is subject to certain property exemptions provided by law.

(17) "Initiating agency" means a state or tribal IV-D agency, or a child support agency in a reciprocating foreign country, in which an individual has applied for or is receiving child support services.

(18) "Intergovernmental" means a case or action that involves a tribe, another country, or another state's child support agency.

(19) "Issuing jurisdiction" means the state, tribe or reciprocating foreign country in which a tribunal issues a support order or renders a judgment determining parentage and includes an "issuing state" as defined in ORS 110.303(9).

(20) "Judgment Lien" means the effect of a judgment on real property for the county in which the judgment is entered, or such other county where the lien is recorded, and includes any support arrearage lien attaching to real property.

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(21) "Judgment Remedy" means the ability of a judgment creditor to enforce a judgment, including enforcement through a judgment lien.

(22) "Legal proceeding" means any action related to the support order that requires service of documents on the parties. For the purposes of OAR 137-055-1140 and 137-055-1160, "legal proceeding" means a proceeding initiated by the administrator.

(23) "Medicaid" refers to Title XIX of the Social Security Act (see the definition under "Title XIX").

(24) "Money Award" means a judgment or portion of a judgment that requires the payment of money. A money award will always refer to a sum certain and will not require a payment in installments.

(25) "Oregon Health Authority" or "OHA" is the State of Oregon agency acting as the state Medicaid agency for administration of funds from Title XIX and XXI of the Social Security Act and to administer medical assistance under ORS chapter 414.

(26) "Oregon Youth Authority", or "OYA", is the State of Oregon agency responsible for the supervision, management, and administration of state parole and probation services, community out-of-home placements, and youth correction facilities for youth offenders, and other functions related to state programs for youth corrections.

(27) "Party" means an obligor, obligee, a child attending school under ORS 107.108 and OAR 137-055-5110, and includes any person who has been joined to the proceeding.

(28) "Responding agency" means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental case.

(29) "Subsequent child" means a child whose paternity or support has not been established and who is born to the same parents of another child, or who has not been included in a support order for another child with the same parties.

(30) "Support" means monetary payments, health care coverage payments or premiums, cash medical payments or other benefits or payments that a person has been ordered by a court or by administrative process, or has voluntarily agreed, to provide for the benefit and maintenance of another person.

(31) "Support Arrearage Lien" means a lien that attaches to real property when an installment becomes due under the terms of a support award and is not paid.

(32) "Support Award" means a money award or administrative order that requires the payment of child or spousal support.

(33) "Support Order" means a judgment or order, whether temporary, final or subject to modification, which reflects an obligation to contribute to the support of a child, a spouse or a former spouse, and requires an obligor to provide monetary support, health care, arrears or reimbursement. A support order may include related costs and fees, interest, income withholding, attorney fees and other relief.

(34) "TANF" means "Temporary Assistance for Needy Families", a public assistance program which provides case management and cash assistance to low income families with minor children. It is designed to promote personal responsibility and accountability for parents. The goal of the program is to reduce the number of families living in poverty through employment services and community resources. Title IV-A of the Social Security Act is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children.

(35) "Tiered" order means an order which includes an amount of support to be paid if an adult child becomes a child attending school under ORS 107.108 and OAR 137-055-5110.

(36) "Title IV-A" refers to Title IV-A of the Social Security Act, which is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children (see "TANF"). Applicants for assistance from IV-A programs are automatically referred to their state IV-D agency in order to identify and locate the non-custodial parent, establish paternity or a child support order, and obtain child support payments.

(37) "Title IV-D" refers to Title IV-D of the Social Security Act, which requires each state to create a program to locate noncustodial parents, establish paternity, establish and enforce child support obligations, and collect, distribute and disburse support payments. Recipients of IV-A (TANF), IV-E (foster care), XIX (Medicaid), and Oregon Youth Authority (OYA) assistance are referred to their state's IV-D child support program. States must also accept applications from families who do not receive assistance, if requested, to assist in collection of child support. Title IV-D also established the federal Office of Child Support Enforcement.

(38) "Title IV-E" refers to Title IV-E of the Social Security Act which established a federal-state program known as Foster Care that provides

financial support to a person, family, or institution that is raising a child or children that is not their own. The funding for IV-E foster care programs is primarily from federal sources.

(39) "Title XIX", known as Medicaid, refers to Title XIX of the Social Security Act which mandates health care coverage by states for TANF recipients and certain other means-tested categories of persons. Within broad national guidelines which the federal government provides, each state: establishes its own eligibility standards; determines the type, amount, duration, and scope of services; sets the rate of payment for services; and administers its own program. In Oregon, the program is administered by OHA.

Stat. Auth.: ORS 18.005, 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0001; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-1090

Good Cause

(1) For the purposes of OAR chapter 137, division 055, "good cause" means the Child Support Program (CSP) is exempt from providing services as defined in ORS 25.080. Specifically excluded from this definition is good cause for not withholding as defined in ORS 25.396 and OAR 137-055-4060 and good cause found for not disbursing support to a child attending school under ORS 107.108 and OAR 137-055-5110.

(2) If an obligee believes that physical or emotional harm to the family may result if services under ORS 25.080 are provided, the obligee may request, either verbally or in writing, that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator will:

(a) On an open TANF or Medicaid case, immediately suspend all activity on the case, notify DHS or OHA to add good cause coding, and send a safety packet to the obligee requesting a response be sent to DHS; or

(b) On any other case, immediately suspend all activity on the case, add good cause case coding pending a final determination, and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(3) Good cause must be determined by:

(a) The Department of Human Services (DHS), pursuant to OAR 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205, if TANF or Title IV-E benefits are being provided;

(b) The Oregon Health Authority (OHA) if Medicaid benefits are being provided;

(c) The Oregon Youth Authority (OYA), pursuant to OAR 416-100-0020 and Policy Statement II-E-1.5, if the child is in OYA's custody;

(d) The Director of the CSP when the provisions of OAR 137-055-3080 apply; or

(e) The administrator when the provisions of subsections (a) through (d) of this section do not apply.

(4) When the provisions of subsection (3)(e) apply and the obligee makes a written claim that the provision of services may result in emotional or physical harm to the child or obligee or completes and returns the good cause form, the administrator will:

(a) Make a finding and determination that it is in the best interests of the child not to provide services;

(b) Proceed with case closure pursuant to OAR 137-055-1120; and

(c) Except for arrears permanently assigned to the Oregon Youth Authority, satisfy any and all permanently assigned arrears as defined in OAR 137-055-6010.

(5) In determining whether providing services is in the best interest of the child under section (3)(d), the CSP Director will consider:

(a) The likelihood that provision of services will result in physical or emotional harm to the child or obligee, taking into consideration:

(A) Information received from the obligee; or

(B) Records or corroborative statements of past physical or emotional harm to the child or obligee, if any.

(b) The likelihood that failure to provide services will result in physical or emotional harm to the child or obligee;

(c) The degree of cooperation needed to complete the service;

(d) The availability and viability of other protections, such as a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160; and

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(e) The extent of involvement of the child in the services sought.

(6) A finding and determination by the CSP Director that good cause does not apply, may be appealed as provided in ORS 183.484.

(7) A finding and determination of good cause applies to any case which involves the same obligee and child, or any case in which a child is no longer in the physical custody of the obligee, but there is a support order for the child in favor of the obligee.

(8) When an application for services is received from an obligee and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will:

(a) Notify the obligee of the previous finding and determination of good cause and provide a Client Safety Packet;

(b) Allow the obligee 30 days to retract the application for services or return appropriate documents from the Client Safety Packet; and

(c) If no objection to proceeding or good cause form is received from the obligee, document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(9) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody and there is no previous support award, the administrator will open a new case without good cause coding with the physical custodian as the obligee.

(10)(a) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and the case in which there has been a finding and determination of good cause has a support award in favor of the obligee who originally claimed good cause, the administrator will:

(A) Notify the obligee who originally claimed good cause that an application has been received and provide a Client Safety Packet; and

(B) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(C) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee who originally claimed good cause, or if the location of the obligee who originally claimed good cause is unknown, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed;

(c) If no objection or good cause form is received from the obligee who originally claimed good cause, the administrator will document CSEAS, make a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160 for that obligee, remove the good cause designation, and, if the case has been closed, reopen the case.

(11)(a) If a request for services under ORS chapter 110 is received from another jurisdiction and TANF, Title IV-E or Medicaid benefits are not being provided by the State of Oregon, the child is not in OYA's custody and there has been a finding and determination of good cause, the administrator will:

(A) Notify the referring jurisdiction of the finding and determination of good cause and request that the jurisdiction consult with the obligee to determine whether good cause should still apply; and

(B) If the location of the obligee is known, notify the obligee that the referral has been received, provide a Client Safety Packet and ask the obligee to contact both the referring agency and the administrator if there is an objection to proceeding; and

(C) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(D) Allow the obligee 30 days to provide a contact address as provided in OAR 137-055-1160.

(b) If an objection or good cause form is received from the obligee, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed.

(c) If there is no objection or good cause form received from the obligee, or if the obligee's address is unknown, and the referring jurisdiction advises that the finding and determination of good cause no longer applies, the administrator will document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(12) If a referral for services under ORS 25.080 is received because TANF, Title IV-E or Medicaid benefits are being provided or the child is in

OYA's custody, and there has been a previous finding and determination of good cause, the administrator will notify the appropriate state agency of the previous finding and determination of good cause and:

(a) If TANF, Title IV-E or Medicaid benefits are being provided, DHS will, in consultation with the office which made the good cause finding and determination and as provided in DHS policy SS-PT-05-005, decide whether good cause still applies pursuant to OAR 413-100-0830, 461-135-1200, 461-135-1205, 461-120-0350 or 461-120-0360; or

(b) If the child is in OYA's custody, OYA will, in consultation with the office which made the good cause finding and determination and as provided in OYA Policy II-E-1.5, determine if the circumstances that created the good cause still exist and, if they do not, request that the agency which determined good cause remove the coding.

(13) When the provisions of section (12) apply, the administrator will not provide services unless and until good cause coding is removed by the agency who made the good cause finding and determination.

(14) Notwithstanding any other provision of this rule, when a case has not previously had a good cause finding and determination and TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and DHS, OHA or OYA makes a current good cause finding and determination on a related case, the administrator will not provide services on the case or related cases unless and until good cause coding is removed by DHS, OHA or OYA.

(15) In any case in which a good cause finding and determination has been made and subsequently removed, past support under ORS 416.422 and OAR 137-055-3220 may not be sought for any periods prior to the determination that good cause no longer applies.

(16) In any case in which a good cause finding and determination has been made, and a child attending school as defined in ORS 107.108 and OAR 137-055-5110 is a party to the case, the child attending school may file an application for services pursuant to OAR 137-055-1060, 137-055-1070 and 137-055-5110.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 12-2009, f. & cert. ef. 10-1-09; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-1120

Case Closure

(1) The administrator may close a child support case whenever the case meets at least one of the following criteria for case closure:

(a) There is no longer a current support order, arrears are under \$500 and there are no reasonable expectations for collection or the arrears are uncollectible under state law. For the purposes of this subsection, "no longer a current support order" means the support order is not currently accruing or there never was a support order. This subsection specifically includes but is not limited to cases in which:

(A) Action to establish support has not been initiated and the child is at least 18 years old;

(B) The child has been adopted;

(C) The child is deceased; or

(D) Parental rights for the child have been terminated;

(b) The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(c) Paternity cannot be established because:

(A) A parentage test, or a court or administrative process, has excluded the putative father and no other putative father can be identified;

(B) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the administrator with the recipient of services;

(C) Action to establish paternity has not been initiated and the child is at least 18 years old; or

(D) In a case involving incest or forcible rape, or where legal proceedings for adoption are pending, the administrator has determined that it would not be in the best interests of the child to establish paternity. For the purposes of this paragraph, a determination by the Department of Human Services (DHS) or the Oregon Youth Authority (OYA) that paternity establishment is not in the best interests of the child is sufficient for the administrator to make the same finding.

(d) The location of the non-custodial parent is unknown, and the state parent locator service has made regular attempts using multiple sources, all of which have been unsuccessful, to locate the non-custodial parent:

(A) Over a three-year period when there is sufficient information to initiate an automated locate effort; or

(B) Over a one-year period when there is not sufficient information to initiate an automated locate effort;

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(e) When paternity is not at issue and the non-custodial parent cannot pay support for the duration of the child's minority because the parent is both:

(A) Institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; and

(B) Without available income or assets which could be levied or attached for support;

(f) The non-custodial parent:

(A) Is a citizen of, and lives in, a foreign country;

(B) Does not work for the Federal government or for a company or state with headquarters in or offices in the United States;

(C) Has no reachable income or assets in the United States; and

(D) Oregon has been unable to establish reciprocity with the country;

(g) The state parent locator service has provided location-only services based upon a request under 45 CFR 302.35(c)(3);

(h) The custodial parent or recipient of services requests closure, and:

(A) There is no assignment to the state of medical support; and

(B) There is no assignment of arrears that have accrued on the case;

(i) An initiating agency requests closure and the agency requesting closure:

(A) Has closed its case; or

(B) Has advised Oregon that services are no longer needed.

(j) The custodial parent or recipient of services is deceased and no trustee or personal representative has requested services to collect arrears;

(k) DHS, OYA, the Oregon Health Authority or the administrator pursuant to OAR 137-055-1090, has made a finding of good cause or other exceptions to cooperation and has determined that support enforcement may not proceed without risk or harm to the child or caretaker;

(l) In a non-TANF case (excluding a Medicaid case), the administrator is unable to contact the custodial parent, or recipient of services, within 60 calendar days, despite an attempt of at least one letter sent by first class mail to the last known address;

(m) In a non-TANF case, the administrator documents the circumstances of non-cooperation by the custodial parent, or recipient of services, and an action by the custodial parent, or applicant for services, is essential for the next step in providing enforcement services; or

(n) The administrator documents failure by the initiating agency to take an action which is essential for the next step in providing services.

(2)(a)(A) Except as otherwise provided in this section, if the administrator elects to close a case pursuant to subsection (1)(a), (1)(e), (1)(f), (1)(j) or (1)(l) through (1)(n) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case.

(B) If the administrator elects to close a case pursuant to subsection (1)(b) through (1)(d) of this rule, the administrator:

(i) Will notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case;

(ii) Is not required to notify the obligor of the intent to close the case; and

(iii) If the provisions of paragraph (1)(c)(D) apply, is not required to notify any other party.

(C) If the administrator elects to close a case pursuant to subsection (1)(g) or (1)(i) of this rule, the administrator is not required to notify any party of the intent to close the case. However, if the case is closed pursuant to paragraph (1)(i), the administrator will send a courtesy notice to the parties advising the reason for closure.

(D) If the administrator elects to close a case pursuant to subsection (1)(h) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case, except:

(i) When the case is a Child Welfare or Oregon Youth Authority case in which the child has left state care, an order under OAR 137-055-3290 is not appropriate, and a notice and finding has not been initiated, the case will be closed immediately; and

(ii) No closure notice will be sent to the parents unless a parent had contact with the Child Support Program, Child Welfare or the Oregon Youth Authority regarding the child support case.

(E) If the administrator elects to close a case pursuant to subsection (1)(k) of this rule, the administrator will:

(i) Notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case; and

(ii) Not notify the obligor of the intent to close the case.

(b) The 60-day time frame in paragraph (2)(a)(A) is independent of the 60-day calendar time frame in subsection (1)(l).

(c) The administrator will document the notice of case closure by entering a narrative line, or lines, on the child support computer system and will include the date of the notice.

(d) The content of the notice in paragraph (2)(a)(A) must include, but is not limited to, the specific reason for closure, actions a party can take to prevent closure, and a statement that an individual may reapply for services at any time.

(3) Notwithstanding paragraph (2)(a)(A) of this rule, a case may be closed immediately if:

(a) All parties agree to waive the notice of intent to close and the 60-day objection period when the notice of intent to close has not yet been sent; or

(b) All parties agree to waive the remainder of the 60-day objection period when the notice of intent to close has already been sent.

(4) The administrator will keep a case open if, in response to the notice sent pursuant to paragraph (2)(a)(A) of this rule:

(a) The applicant or recipient of services:

(A) Supplies information which could lead to the establishment of paternity or of a support order, or enforcement of an order; or

(B) Reestablishes contact with the administrator, in cases where the administrator proposed to close the case under subsection (1)(l) of this rule; or

(b) The party who is not the applicant or recipient of services completes an application for services.

(5) A party may request at a later date that the case be reopened if there is a change in circumstances that could lead to the establishment of paternity or a support order, or enforcement of an order, by completing a new application for services.

(6) The administrator will document the justification for case closure by entering a narrative line or lines on the child support computer system in sufficient detail to communicate the basis for the case closure.

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 25.020 & 25.080

Hist.: AFS 35-1986(Temp), f. & ef. 4-14-86; AFS 66-1986, f. & ef. 9-19-86; AFS 27-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0055; AFS 15-1993, f. 8-13-93, cert. ef. 8-15-93; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0050; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1120; 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 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-1145

Access to Child Support Records

(1) When information may be shared pursuant to ORS 25.260, this rule clarifies the type of information which may be accessed through automation or contact and who is authorized to access the information.

(2)(a) Information which may be accessed from the Child Support Enforcement Automated System (CSEAS) records by an agency administering programs under Title IV-A of the Social Security Act may include:

(A) Obligor name, social security number, date of birth, address and phone number;

(B) Obligee name, social security number, date of birth and address;

(C) Title IV-A case number;

(D) Whether the case carries identifiers indicating:

(i) There is a finding or determination of good cause under OAR 137-055-1090, 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205;

(ii) There is an order for nondisclosure of information pursuant to OAR 137-055-1160; or

(iii) There is a contact address;

(E) Obligor employer name, address, federal identification number and wages;

(F) Obligor unemployment compensation benefits;

(G) Obligor's gross quarterly compensation;

(H) The name of any jurisdiction with a child support case or order;

(I) Child's name, date of birth and social security number;

(J) The date(s) and amount(s) of any support payment distributed and to whom or where it was distributed; and

(K) Any information which is not considered confidential, including but not limited to the child support case number, caseload assignment and Child Support Program (CSP) employee roster.

(b) Information which may be accessed from CSEAS records by an agency administering programs under Title XIX of the Social Security Act may include:

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(A) Obligor name, social security number, date of birth, address and phone number;

(B) Obligee name, social security number, date of birth and address;

(C) Title IV-A case number;

(D) Whether the case carries identifiers indicating:

(i) There is a finding or determination of good cause under OAR 137-055-1090, 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205;

(ii) There is an order for nondisclosure of information pursuant to OAR 137-055-1160; or

(iii) There is a contact address;

(E) Obligor's employer name, address, federal identification number and wages;

(F) Obligor's unemployment compensation benefits;

(G) Obligor's gross quarterly compensation;

(H) The name of any jurisdiction with a child support case or order;

(I) Child's name, date of birth and social security number;

(J) Whether health care coverage is ordered;

(K) Whether health care coverage is provided;

(L) Insurer name, address and health insurance policy number;

(M) The date(s) and amount(s) of any support payment made to the obligee; and

(N) Any information which is not considered confidential, including but not limited to the child support case number, caseload assignment and CSP employee roster.

(c) Information which may be accessed from CSEAS records by an agency administering programs under Title I, X, XIV or XVI of the Social Security Act, an agency administering the Food Stamp program, the State Employment Services Agency (including agencies which administer the unemployment compensation program), and agencies administering workers' compensation programs is limited to obligor name, social security number and address and employer name, address and federal identification number.

(A) Notwithstanding the provisions of subsection (2)(c), if an agency identified in that subsection receives a written consent to release information as provided in OAR 137-055-1140(12), the agency may have access to information that may be released to a party.

(B) In addition to the information listed in subsection (2)(c), the State Employment Services Agency (including agencies which administer the unemployment compensation program) may have access to the history of the obligor's employers names, addresses and federal identification numbers.

(d) Information which may be accessed from CSEAS records by a private industry council, as defined in OAR 137-055-1140, is limited to obligor name, address, phone number and Title IV-A case number.

(3) An agency administering a program identified in section (2) of this rule may obtain access for its employees to CSEAS records by entering into an interagency agreement with the Child Support Program (CSP). Any agreement must include provisions under which the agency seeking access agrees to put into place a process that ensures:

(a) Each employee given access has read and understands the CSP rules and Division of Child Support conflict of interest policy;

(b) Each employee given access agrees to abide by the terms of the CSP rules and policy;

(c) Each employee given access agrees to access and use information only for the purposes for which access is allowed as described in this rule;

(d) Employees can identify and be screened from conflict of interest cases;

(e) The agency, on a regular basis, audits access by employees, including verification of the purpose for which information is accessed and provides the CSP with the results of the audit;

(f) Violations are reported to the CSP, including the steps taken by the agency to prevent future violation;

(g) Access is revoked as provided in section (4) of this rule; and

(h) Access rights are updated, including notifying the CSP when an employee terminates or is transferred.

(4) If an employee of an agency described in section (2) of this rule discloses or inappropriately uses the information covered by this rule:

(a) The CSP Director, after consulting with the employee's agency, will determine whether the disclosure or usage occurred or likely occurred; and

(b) The employee's access to information from CSEAS records will be revoked:

(A) Temporarily, if a determination by the CSP Director is pending; or

(B) Permanently, if a determination by the CSP Director is made that disclosure or usage occurred or likely occurred.

(c) The provisions of this section are in addition to any other penalty for disclosure or usage of confidential information imposed by the employee's agency or by any other provision of law.

(5) CSP staff may disclose case information to an employee of an agency described in subsection (2)(a) when:

(a) That agency's employee requests specific information from a branch office;

(b) The employee's agency has entered into an agreement as provided in section (3) of this rule; and

(c) The source of the information is not the Internal Revenue Service.

(6) CSP staff may disclose information to an employee of an agency described in subsection (2)(b) when:

(a) That agency's employee requests specific information from a branch office;

(b) The employee's agency has entered into an agreement as provided in section (3) of this rule; and

(c) The source of the information is not:

(A) The Internal Revenue Service;

(B) The National Directory of New Hires; or

(C) The Federal Case Registry.

(7) Information for which disclosure is allowed under section (5) or (6) of this rule may be accessed from CSEAS records if feasible.

Stat. Auth.: ORS 25.260, 180.345 & 180.380

Stats. Implemented: ORS 25.260

Hist.: DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-3220

Establishment of Past Support Orders

(1) For purposes of this rule the following definitions apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in subsection (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the non-custodial parent to the custodial parent or other custodial adult for purposes of support of the child.

(c) The Oregon Child Support Guidelines means the formula for calculating child support specified in ORS 25.275.

(2) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

(3) When a non-custodial parent has made payments in cash or in kind to a custodial parent or other custodial adult for the support of the child during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support will be ordered.

(4) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment will be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(5) The non-custodial parent must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

(a) Canceled checks;

(b) Cash or money order receipts;

(c) Any other type of funds transfer records;

(d) Merchandise receipts;

(e) Verification of payments from the custodial parent or other custodial adult;

(f) Any other record of payment deemed acceptable by the administrator.

(6) It will be within the discretion of the administrator to determine whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If any party disagrees with this determination, the support determination may be appealed to an administrative law judge per ORS 416.427.

(7) Past support may not be ordered for any period of time prior to the later of:

(a) October 1, 1995; or

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(b) The date of the initiation of IV-D services from any jurisdiction by application for services; or in case of a mandatory referral based on the receipt of TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services, the date of the referral to the Child Support Program (CSP).

(8) If the support case was initiated from another jurisdiction, the date of application for services will be considered to be either:

(a) The date the initiating jurisdiction requests past support to begin but not before October 1, 1995; or

(b) If the initiating jurisdiction requests that past support be established for multiple periods of time, the beginning date of the most recent period but not before October 1, 1995; or

(c) If the initiating jurisdiction does not specify a beginning date for past support, the date of the initiating petition but not before October 1, 1995.

(9) Where CSP services did not produce a support order and CSP services were terminated by the applicant or by the CSP agency per state and federal regulations and subsequently CSP services were initiated again, the administrator will not establish past support prior to the date of the most recent initiation of CSP services. If an initiating jurisdiction requests that past support be established for two or more periods of time, past support will be established only for the most recent period.

(10) If there is or was a child support judgment in existence in any jurisdiction for the non-custodial parent to pay support to the obligee for the same child, no order for past support will be entered for a period of time before entry of the child support judgment already or previously existing except as provided in OAR 137-055-3200.

(11) Where the order to be entered is for past support only and does not include current support and the past support would be owed only to the State of Oregon or another jurisdiction, the administrator will not enter an order for past support for a period of less than four months.

(12) Past support will be calculated per the Oregon Child Support Guidelines and will use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 416.422

Hist.: AFS 28-1995, f. 11-2-95, cert. ef. 11-3-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1010; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3220; DOJ 2-2004, f. 1-2-04, cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-3240

Establishment of Arrears

(1) The administrator will establish arrears on support cases when the following conditions have been met:

(a) Services are being provided under ORS 25.080;

(b) There is an Oregon support order or an order from another jurisdiction has been registered in Oregon;

(c) The administrator has determined that there is a need to establish the arrears balance on the case because:

(A) The administrator has no record or an incomplete accounting case record;

(B) An establishment of income withholding has been requested by an obligor or obligee pursuant to ORS 25.381; or

(C) There is a reason which necessitates that the arrears on the case record be reestablished; and

(D) There has been a request for arrears establishment by a party.

(2) A party requesting establishment or reestablishment of arrears must furnish an accounting that shows the payment history in as much detail as is necessary to demonstrate the periods and amounts of any arrears.

(3) Where arrears had earlier been established, through a process which afforded notice and an opportunity to contest to the parties, the arrears from that period will not be reestablished except that if interest had not been included in the establishment, interest may be added for that period.

(4) The administrator may establish or reestablish arrears by either:

(a) Use of the judicial process authorized under ORS 25.167; or

(b) Use of the administrative process authorized under ORS 416.429.

(5) Upon completion of the arrears establishment process in subsection (4)(a) or subsection (4)(b) of this rule, the case record will be adjusted to reflect the new arrears amount.

(6) Notwithstanding any other provision of this rule, when applicable, arrears will be established pursuant to ORS 25.015.

(7) Arrears for a child attending school as defined in OAR 137-055-5110, will be as set forth in OAR 137-055-5120.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.015, 25.167, 25.381, 416.429

Hist.: AFS 5-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0047; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3240; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-3400

District Attorney Case Assignment for Modification or Suspension of Support

(1)(a) The purpose of this rule is to provide criteria for determining which Oregon District Attorney will have responsibility for initiating action to review and modify an Oregon judgment, or administrative order that requires payment of child support. This rule applies only when both of the following conditions exist:

(A) An Oregon District Attorney has responsibility for providing support enforcement services under ORS 25.080; and

(B) Either of the following is true:

(i) A party to the case has requested a review and modification, as provided in OAR 137-055-3420, for purposes of changing the amount of the monthly support obligation; or

(ii) The obligor is presumed entitled to a suspension of the support obligation as a recipient of certain cash assistance, as provided in ORS 25.245.

(b) This rule does not apply to a Division of Child Support (DCS) office that is performing district attorney functions.

(2) For purposes of this rule, the following definitions apply:

(a) "Requesting party" means the party requesting the district attorney to review and modify the support obligation;

(A) The requesting party may be the obligor, the obligee, or the child attending school;

(B) An obligor deemed presumptively eligible for a suspension under ORS 25.245 will be considered the "requesting party";

(b) "Non-requesting party" means any party that is not the party as defined in subsection (2)(a), above.

(3) In any case where there are arrears, the district attorney responsible under OAR 137-055-2040 for enforcing the case will, if the support order is in another Oregon county, transfer in the order for review and modification under ORS 25.100.

(4) In any case where there are no arrears:

(a) If all the parties reside in the same Oregon county, but the support order is in another county:

(A) The district attorney for the county of residence of the parties will be responsible for review and modification action;

(B) The district attorney for the county of residence may transfer in the support order for review and modification under ORS 25.100, as the county of residence for the non-requesting party.

(b) If any of the parties reside in the same Oregon county that is the county of the support order, the district attorney for that county will be responsible for review and modification action;

(c) If the support order, the requesting party, and the non-requesting party(ies) are all in different counties:

(A) If the district attorney for the county of the requesting party has previously transferred the support order to the requesting party's county for enforcement, the district attorney for the enforcing county will be responsible for review and modification action;

(B) If the case is not currently open as an enforcement case under ORS 25.080, or if the district attorney for the requesting party's county has never transferred the support order for enforcement:

(i) That district attorney will refer the requesting party to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

(C) If the case is currently open as an enforcement case under ORS 25.080:

(i) The district attorney for the enforcing county will transfer the enforcement case to the district attorney for the county of the support order;

(ii) The district attorney for the county of the support order will then be responsible for review and modification action;

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(iii) Once the review and modification is completed, the district attorney for the county of the support order will transfer the enforcement case back to the proper enforcement county under OAR 137-055-2020.

(5) If the requesting party does not reside in Oregon, and regardless of whether the case has arrears or not:

(a) If the requesting party's case is already being enforced, the administrator will advise the requesting party to direct the request to the child support program in that other jurisdiction. The other child support program may then ask the administrator to pursue action under appropriate state and federal statutes;

(b) If the requesting party's support case is not being enforced under the child support program in another jurisdiction, the administrator will handle the request under sections (3) and (4) of this rule.

(6) If the non-requesting party(ies) does not reside in Oregon, the district attorney will handle the request under sections (3) and (4) of this rule.

(7) The matrix set out in **Table 1**, is included in this rule as an aid, and incorporates preceding sections of this rule: [Table not included. See ED. Note.]

(8) Notwithstanding subsection (1)(b), all functions and responsibilities assigned to Oregon District Attorneys under this rule will also be considered assigned to DCS, for those counties where DCS has assumed responsibility from the district attorney for providing support enforcement services.

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

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080 & 25.287

Hist.: AFS 33-1992, f. 11-17-92, cert. ef. 12-1-92; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0074; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3400; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3400; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-3420

Periodic Review and Modification of Child Support Order Amounts

(1) In addition to the definitions found in ORS 25.321 and OAR 137-050-0750, for the purposes of this rule, the following definitions apply:

(a) "Determination" means an order resulting from a periodic review, which finds that the current order of support is in "substantial compliance" with the Oregon guidelines (OAR 137-050-0700 through 137-050-0765) and appropriate health care coverage or cash medical support is ordered against one or both parties.

(b) "Periodic Review" means proceedings initiated under ORS 25.287.

(c) "Review" means an objective evaluation by the administrator of the information necessary for application of the guidelines to determine:

(A) The presumptively correct child support amount; and

(B) The need to provide in the order for the child's health care needs through appropriate health care coverage or cash medical support regardless of whether an adjustment in the amount of child support is necessary.

(d) "Substantial compliance" means that the current support order is within at least 15 percent or \$50, whichever is less, of the presumptively correct child support amount as calculated using the guidelines. When making this determination, the 15 percent or \$50 formula will be applied to the currently ordered support amount.

(2) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program (CSP) will annually notify the parties:

(a) Of their right to request a periodic review of the amount of support ordered; and

(b) That the CSP will perform a mandatory periodic review and adjustment if the family is currently receiving TANF.

(3) The purpose of a periodic review is to determine, based on information from the parties and other sources as appropriate, whether the current child support order should be modified to ensure substantial compliance with Oregon's child support guidelines, or to order appropriate health care coverage or cash medical support for the child.

(4) The administrator will initiate a periodic review if a written request is received from any party and 35 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted. For purposes of calculating the 35-month time period, a suspension and temporary modification order entered pursuant to ORS 416.425(13) will not be considered.

(5) The administrator will initiate a periodic review when 35 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted, and the family is currently receiving TANF. For purposes of cal-

culating the 35-month time period, any suspension and temporary modification order entered pursuant to ORS 416.425(13) will not be considered.

(6) The administrator must complete the determination that the order is in substantial compliance with the guidelines and appropriate health care coverage or cash medical support is ordered, or complete the modification of the existing order within 180 days of receiving a written request for a periodic review, initiating the mandatory review, or locating the non-requesting party(ies), if necessary, whichever occurs later.

(7) The administrator is responsible for conducting a periodic review in this state or for requesting that another jurisdiction conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the jurisdiction reviewing the order applies in determining if a basis for modification exists.

(8) Upon receipt of a written request for a periodic review or when a mandatory periodic review is required, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information which may affect the support calculation.

(9) The administrator will notify the parties in writing of the presumed correct support amount under the child support guidelines and the need to order appropriate health care coverage or cash medical support. Notification may be by motion for modification or a proposed determination that the existing order is in substantial compliance and appropriate health care coverage or cash medical support is already ordered, and will include a request for hearing form.

(10) If the administrator determines that the support order should be modified and there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

Stat. Auth.: ORS 180.345 & 416.455

Stats. Implemented: ORS 25.080, 25.287, 25.321 - 25.343, 107.135 & 416.425

Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3420; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; 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 11-2008(Temp), f. & cert. ef. 7-15-08 thru 9-30-08; DOJ 12-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DOJ 14-2008(Temp), f. & cert. ef. 10-7-08 thru 3-29-09; DOJ 1-2009, f. & cert. ef. 1-2-09; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-4040

New Hire Reporting Requirements

(1) Employers with employees who work only in this state or who have designated Oregon as their reporting state with the United States Secretary of Health and Human Services must transmit information regarding the hiring or rehiring of any employee by:

(a) Mailing or faxing to the Division of Child Support (DCS) a copy of the IRS W-4 Form completed by the newly hired employee; or

(b) Mailing or faxing to DCS a completed form adopted by DCS; or

(c) Sending to DCS a magnetic tape or diskette, as specified by DCS;

or

(d) Any other method approved by DCS.

(2) Reports made under this section must contain the employer's name, address and federal tax identification number and the employee's name, address and social security number.

(3) Reports made by copy of W-4 form or by the form adopted by DCS must be sent to DCS not later than 20 days after the employer hires or rehires the employee. Employers who transmit the reporting data magnetically or electronically must transmit the data within 12 to 16 days of hiring or rehiring the employee.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.790

Hist.: AFS 16-1998, f. 9-16-98, cert. ef. 10-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0236; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4040; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-4455

Expiration of Support Judgment Remedies

(1) Judgment remedies for the child support award portion of a judgment, and any lump sum money award for unpaid child support installments, expire 35 years after the entry of the judgment that first establishes the support obligation.

ADMINISTRATIVE RULES

(2) Notwithstanding any other provisions of this rule, when the child support judgment being enforced was issued by another jurisdiction, the expiration of judgment under the laws of this state or of the issuing jurisdiction, whichever is longer, applies.

(3) Spousal support judgments entered on or after January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid.

(4) Spousal support judgments entered prior to January 1, 2004: Judgment remedies for any unpaid installment under the spousal support award portion of a judgment, expire the later of:

(a) 25 years after entry of the judgment that first establishes the support obligation; or

(b) 10 years after an installment comes due under the judgment and is not paid; or

(c) 10 years from the date of a judgment renewal.

(5) The judgment remedies for a money award for child or spousal support expire by operation of law.

(6) The Department of Justice, Division of Child Support (DCS) is responsible for completing expiration of judgment audits on cases receiving support enforcement services under ORS 25.080.

(7) If an audit result is that the expired judgment amount is greater than the current arrears on the case, DCS will reduce the case arrears to zero.

(8) When an expiration of judgment audit is completed, DCS will notify the parties if there is any change to the arrears as a result of the audit. The notice must include:

(a) The current balance or zero, as appropriate, per section (7) of this rule;

(b) Information that a party may make a written request for an administrative review within 30 days of the notice.

(9) If a party requests an administrative review, DCS will:

(a) Conduct the administrative review within 45 days from the date of receiving the objection to verify the case was adjusted correctly and make any necessary corrections or adjustments as determined in the review;

(b) Notify both the obligee and the obligor, in writing, of the results of the review and of the right to appeal pursuant to ORS 183.484

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 18.180 - 18.194

Hist.: AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6110; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6110; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; Renumbered from 137-055-6110, DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-4540

Passport Denial and Release

(1) When the administrator submits delinquent child support accounts for administrative offset pursuant to OAR 137-055-4340, the federal Office of Child Support Enforcement (OCSE) will select individual obligors with a total delinquency in excess of \$2,500 for passport denial.

(2) Passport denial means that pursuant to 42 U.S. Code 652(k), the United States Secretary of State will refuse to issue a passport and may revoke, restrict or limit a passport which was previously issued.

(3) The parties will receive notice of passport denial with the notice of administrative offset specified in OAR 137-055-4340. The notice will advise the parties of the right to an administrative review under OAR 137-055-4340.

(4) An obligor whose passport has been denied may request an administrative review. The administrator will conduct a review and notify the parties of the decision. The only issues that may be considered in the review are whether:

(a) The administrator erroneously submitted the obligor to OCSE for passport denial, such as mistaken identity or an error in recordkeeping or accounting;

(b) The obligor has provided documentation of a life or death situation involving an immediate family member, as defined by OCSE; or

(c) The obligor has paid as ordered, but the arrearage that caused the case to be submitted for passport denial resulted solely from one or more orders for past support or upward modifications filed in court within one year of the administrator's receipt of the request for review.

(5) If at any time the administrator finds that the obligor qualifies for passport release under one or more of the criteria in subsections (4)(a) through (4)(c), the administrator will notify OCSE to release the passport.

(6) Passport denial will continue until the delinquency is paid in full, unless the administrator determines the obligor qualifies for passport release under this rule.

(7) Where a passport has been denied and the obligor has paid the delinquency in full or the administrator determines the obligor qualifies for passport release under this rule, the administrator will notify OCSE to release the passport. Notice will be by the process specified by OCSE.

Stat. Auth.: ORS 25.625 & 180.345

Stats. Implemented: ORS 25.625

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-9; AFS 15-2000, f. 5-31-00, cert. ef. 6-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0234; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4540; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4540; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 13-2008, f. & cert. ef. 10-1-08; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-5080

Adding Interest Calculations to Individual Support Cases

(1) For a support case with an Oregon support order as the controlling order, the administrator will add interest calculations to the case by using the establishment of arrears process set out in OAR 137-055-3240 under the following conditions:

(a) The party makes a written request that the interest be added to the case;

(b) The requesting party provides a month by month calculation showing support accrual, principal due and interest accrual for each month with total principal and interest due as separate totals at the end of the calculations; and

(c) The interest is calculated per ORS 82.010 from the date of entry of a judgment in Oregon.

(2) The administrator may limit adding interest to the case under section (1) of this rule to one time every 24 months.

(3) For a case with a controlling support order from another jurisdiction, the law of the jurisdiction which issued the controlling order governs the computation and accrual of interest under the support order. Interest accrued under the laws of the jurisdiction which issued the controlling order may be added to the Oregon case by administratively reconciling the case record when interest amounts are provided by the other jurisdiction. The administrator will send an informational notice to the parties when the case is adjusted.

Stat. Auth.: Sec. 2, Ch. 73 OL 2003

Stats. Implemented: ORS 25.167, 82.010 & 416.429

Hist.: AFS 6-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0048; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; AFS 15-2002, f. 10-30-02, cert. ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5080; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-5220

Satisfaction of Support Awards

The purpose of this rule is to define how the Division of Child Support (DCS) will credit "satisfactions of support award" in certain circumstances. This rule must not be construed as limiting the authority of DCS to approve or credit a satisfaction of support award in other lawful circumstances not specified in this rule.

(1) When support payment records are kept by the Department of Justice, an obligee may satisfy amounts indicated on the case records as past due by filing a properly-completed "satisfaction of support award" form with the administrator, subject to approval by DCS under the provisions of this rule; or in accordance with OAR 137-055-5240.

(2) When current support or arrears are assigned to the State of Oregon or to another jurisdiction, and the obligor is seeking credit for support payments not made through DCS:

(a) DCS and its attorneys have authority to approve and sign satisfactions.

(b) This authority may be exercised only when the obligee has signed a satisfaction of support award form which acknowledges that the support payment was received.

(3) DCS and its attorneys have authority to sign and approve satisfactions of support award for money paid through DCS as payment of assigned support.

(4) DCS will record, on the case record, all properly-completed satisfactions of support award not assigned, and all satisfactions ordered by a court or a hearing order, and all satisfactions for assigned support that are approved in accordance with this rule. DCS will also promptly forward the satisfaction form to the appropriate court administrator, together with a certificate stating the amount of support satisfaction entered on the case record.

ADMINISTRATIVE RULES

(5) Except when satisfied and approved by DCS and its attorneys or by a court or hearing order, DCS will not enter a satisfaction on a case record for support that has been assigned to the State of Oregon or another jurisdiction.

(6) When DCS rejects a satisfaction in part or in full as provided in section (5) above, DCS will send written notice to the obligor and obligee, by regular mail to the most recent address of record. Such notice will indicate the reason for the rejection.

(7) All satisfactions must contain the following:

(a) The full names of both the obligor and the obligee;

(b) The name of the Oregon county where the support award was entered;

(c) The Oregon Child Support Program support case number, or the circuit court case number;

(d) Either:

(A) The total dollar amount to be satisfied; or

(B) The period of time for which past due support is satisfied;

(e) A statement that the satisfaction is only for child support or spousal support;

(f) The signature of the obligee, except for those satisfactions approved under sections

(2) and (3) of this rule, where the obligee's signature is not required; and

(g) The date the form is signed.

(8) All signatures on "satisfactions of support award" must be notarized, except on court orders.

(9) Notwithstanding any other provision of this rule, DCS has the authority to file and execute a satisfaction, without the need to notarize such satisfaction, when all of the following are true:

(a) The obligor provides a sworn affidavit that the support award has been paid in full, and

(b) DCS certifies that it has a complete payment record for the support award and that the payment records shows no arrears. DCS will be considered to have a complete pay record if DCS has kept the pay record for the support judgment from the date of the first support payment required under the award, or if the obligee or the administrator established arrears for the time period when DCS did not keep the pay record on the case.

(10) When DCS receives a sworn affidavit under the provisions of subsection (9)(a) of this rule, DCS will examine its support records and determine if it has the authority under section (9) of this rule to execute and file a satisfaction of support award. DCS will promptly notify the obligor if DCS determines that it does not have authority to execute and file a satisfaction of support award. DCS will also determine if any amounts due for support were not assigned to the state. If DCS determines that any amounts were not assigned to the state, DCS will give notice to the obligee in the manner provided by ORS 25.085. The notice must inform the obligee that DCS will execute and file the satisfaction of support award unless DCS receives an objection and request for hearing within 30 days after the date of mailing the notice.

(11) If the obligee requests a hearing under section (10) of this rule, a contested case hearing will be conducted under ORS 183.310 to 183.502 before an administrative law judge.

(12) If support is owed to a child attending school the obligee may only satisfy arrears as defined in OAR 137-055-5120.

Stat. Auth.: ORS 18.225 & 180.345

Stats. Implemented: ORS 18.225 - 238 & 25.020

Hist.: AFS 21-1978, f. & ef. 5-30-78; AFS 26-1979(Temp), f. & ef. 8-16-79; AFS 22-1980, f. & ef. 4-3-80; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0005; AFS 17-1991, f. & cert. ef. 8-29-91; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 19-1995, f. 8-30-95, cert. ef. 9-9-95; AFS 14-1996, f. 4-24-96, cert. ef. 5-1-96; AFS 28-1996, f. & cert. ef. 7-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0155; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5220; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-5240

Credit for Support Payments not made to the Division of Child Support

(1) In accordance with ORS 25.020, on any support case where the obligor is required to pay support through the Division of Child Support (DCS), DCS will not credit the obligor's support account for any payment not made through DCS, except as provided in ORS 25.020 and this rule.

(2) The other provisions of this rule notwithstanding, on any case where an order of another jurisdiction is registered in Oregon under ORS Chapter 110 for enforcement only, and either the issuing jurisdiction or the jurisdiction in which the obligee resides has an active child support

accounting case open, DCS does not have authority to give credit for payments not paid through Oregon DCS. In any such case, the obligor seeking credit must request credit from the jurisdiction with the active child support accounting case. DCS will adjust its records to reflect credit for such payments only upon receiving notification from the other jurisdiction, in writing, by electronic transmission, by telephone, or by court order, that specified payments will be credited.

(3) DCS will give credit for payments not made to DCS when:

(a) Payments are not assigned to the State of Oregon or to another jurisdiction, and

(A) The obligor, obligee and the party who received the payment agree in writing that specific payments were made and should be credited; or

(B) The obligor and the child attending school, as defined in ORS 107.108 and OAR 137-055-5110, agree in writing that specific payments were made and should be credited for amounts that accrued during the time the child was a child attending school.

(b) Payments are assigned to the State of Oregon, and all of the following additional conditions are true:

(A) The parties make sworn written statements that specific payments were made;

(B) The parties present canceled checks, or other substantial evidence, to corroborate that the payments were made; and

(C) The administrator has given written notice to the obligee or the child attending school, prior to the obligee or the child attending school making a sworn written statement under subsection (b), of any potential criminal or civil liability that may attach to an admission of receiving the assigned support. Potential criminal or civil liability may include, but is not limited to:

(i) Prosecution for unlawfully receiving public assistance benefits.

(ii) Liability for repayment of any public assistance overpayments for which the obligee or child attending school may be liable.

(iii) Temporary or permanent disqualification from receiving public assistance, food stamp, or medical assistance benefits due to an intentional program violation being established against the obligee or child attending school for failure to report, to the administrator, having received payments directly from the obligor.

(c) The administrator is enforcing the case at the request of another jurisdiction, regardless of whether or not support is assigned, and that jurisdiction verifies that payments not paid to DCS were received by the other jurisdiction or by the obligee directly. Such verification may be in writing, by electronic transmission, by telephone, or by court order.

(d) An order of an administrative law judge, or an order from a court of appropriate jurisdiction, so specifies.

(4) To receive credit for payments not made to DCS, the obligor may apply directly to the administrator for credit, by providing the documents and evidence specified in section (3) of this rule.

(5) Except as provided in section (2) of this rule if the obligee, a child attending school, or other jurisdiction does not agree that payments were made, pursuant to subsection (3)(a) or (3)(c) of this rule, or does not make a sworn written statement under subsection (3)(b), the obligor may make a written request to the administrator for a hearing.

(a) Prior notice of the hearing and of the right to object will be served upon the obligee in accordance with ORS 25.085 and the child attending school.

(b) Prior notice of the hearing and of the right to object may be served upon the obligor by regular mail to the address provided by the obligor when applying for credit.

(c) A hearing conducted under this rule is a contested case hearing in accordance with ORS 183.413 through ORS 183.470. Any party may also seek a hearing de novo in the Oregon circuit court.

(d) After the hearing, an administrative law judge may order DCS to credit the obligor's support account for a specified dollar amount of payments not made through DCS, or for all payments owed through a specified date.

(e) The other provisions of this section notwithstanding, an administrative law judge does not have jurisdiction under this section in cases where the administrator is enforcing another jurisdiction's order.

(6) Nothing in this rule precludes DCS from giving credit for payments not made through DCS when a judicial determination has been made giving credit or satisfaction, or when the person to whom the support is owed has completed and signed a "satisfaction of support judgment" form adopted by DCS in accordance with OAR 137-055-5220.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020 & 25.085

ADMINISTRATIVE RULES

Hist.: AFS 42-1995, f. 1-28-95, cert. ef. 1-1-96; AFS 8-1996, f. 2-23-96, cert. ef. 3-1-96; AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0157; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5240; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-6120

Satisfaction of Arrears for Less Than Full Payment

The Division of Child Support (DCS) may satisfy all or any portion of child support arrears that are assigned to the State of Oregon or to any other jurisdiction, subject to the following:

(1) DCS may satisfy all or any portion of assigned arrears only if one or more of the following circumstances apply:

(a) The arrears are a substantial hardship to the paying parent or that parent's household; or

(b) A compromise of amounts owing will result in greater collection on the case, considering the maximum amount that DCS could reasonably expect to collect from the obligor if no compromise was made and the probable costs of collecting that maximum amount; or

(c) The obligor has entered into an agreement with DCS to take steps to:

(A) Enhance the obligor's ability to pay child support; or

(B) Enhance the obligor's relationship with the child or children for whom the obligor owes the arrears.

(d) An error or legal defect has occurred that indicates a reduction may be appropriate.

(2) If all or any portion of the assigned arrears are the "state's temporarily-assigned arrears" as defined in OAR 137-055-6010, DCS may satisfy the amount only if the obligee consents and signs the appropriate "satisfaction of support judgment" form.

(3) If all or any portion of the assigned arrears are assigned to another jurisdiction, DCS may satisfy that assigned amount only with the approval of that jurisdiction.

(4) DCS will not sign any satisfaction for less than full payment of arrears until:

(a) The obligor has paid the full amount agreed to as appropriate consideration, and the obligor's payment instrument has cleared the appropriate financial institutions; or

(b) DCS has determined that the obligor has satisfactorily met, or is complying with, any agreement made with DCS pursuant to this rule.

(5) DCS will record a summary of each agreement to satisfy arrears for less than full payment on the appropriate microimaging or computer file on the case.

(6) Any satisfaction executed under this rule will be made pursuant to, and in full compliance with, ORS 18.228.

(7) The provisions of this rule notwithstanding, the obligee may satisfy all or any portion of unassigned arrears due the obligee, pursuant to OAR 137-055-5220.

(8) Nothing in this rule precludes the administrator from negotiating a satisfaction of arrears due or potentially due the obligee for less than full payment by the obligor, but such satisfaction will take effect only when the obligee consents and signs a "satisfaction of support judgment" pursuant to OAR 137-055-5220.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 18.400, 25.020 & 25.080

Hist.: AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0025; AFS 11-2000, f. 4-28-00, cert. ef. 5-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0150; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6120; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-7020

Interstate Cases

OAR 137-055-7020 through 137-055-7180 constitute the guidelines for processing intergovernmental child support cases receiving support enforcement services under ORS 25.080.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.729, 110.303 – 110.452

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2300; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7020; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-7040

Central Registry

(1) The central registry required by 45 CFR 303.7 is established within the Department of Justice, Division of Child Support. It is responsible for receiving, distributing and responding to inquiries on all incoming intergovernmental requests.

(2) Within ten working days of receipt of request from an initiating agency or other petitioner, the central registry will:

(a) Review the documentation submitted with the request to determine completeness;

(b) Forward the request for necessary action either to the State Parent Locator Service for location services or to the administrator for processing;

(c) Acknowledge receipt of the request and ask the initiating agency or other petitioner to provide any missing documentation; and

(d) Inform the initiating agency or other petitioner where the request has been sent for action.

(3) If the documentation received with a request is inadequate, the central registry will forward the request to the appropriate branch or DA office to take appropriate action pending receipt of additional documentation.

(4) The central registry must respond to inquiries about case status within five working days from receipt of the request.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.729, 110.303 – 110.452

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2310; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7040; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-7060

Initiating Oregon Administrator's Responsibilities (General Provisions)

(1) The administrator will use a one-state process, when appropriate, to establish, enforce, or modify a support order, or to determine parentage.

(2) The administrator will determine:

(a) Whether one order exists or multiple orders exist for the same child and obligor;

(b) If there are multiple orders, which jurisdiction should complete a controlling order determination; and

(c) Whether a one-state process is appropriate.

(3) Within 20 calendar days of completing the actions in section (1) and after receipt of any documentation necessary to process a case, the administrator will:

(a) Refer a request for a controlling order determination and reconciliation of arrears, if needed, to the appropriate jurisdiction;

(b) If a one-state process is not appropriate, use federally prescribed forms and procedures to refer the case to the appropriate central registry, tribal IV-D program or central authority of a country for appropriate action.

(4) The administrator will send any requested additional information within 30 calendar days of receipt of the request or notify the responding jurisdiction when the information will be provided.

(5) The administrator will notify the responding jurisdiction within ten working days of receipt of new case information.

(6) The administrator will notify the responding jurisdiction at least annually, and upon request, of interest charges, if any, owed on a support order issued by this state.

Stat. Auth.: ORS 25.729, 180.345

Stats. Implemented: ORS 25.729, 110.303 – 110.452

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2320; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7060; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-7080

Oregon as Initiating State — Establishing Paternity, Support, Medical Insurance and Past-support

(1) The administrator shall use the provisions of ORS Chapter 25 in its entirety, 109.124, 109.125, 109.145, 109.165, 109.225, 109.230, 109.237, 109.250, 109.256, 109.260, 109.262, 109.264, ORS Chapter 110 in its entirety, and 416.400 to 416.470 to establish paternity, support and/or medical insurance in preference to all other remedies available under Oregon law.

(2) Whenever possible, the administrator shall assert jurisdiction over the parties pursuant to ORS 110.318 and use the one-state process.

(3) When a one-state process is not possible, the administrator shall transmit any documents required by state or federal law or rule to the state that can assert jurisdiction over the parties.

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Stat. Auth.: ORS 25.729 & Sec. 2, Ch. 73 OL 2003

Stats. Implemented: ORS 25.729 & 110

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2330; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7080; Suspended by DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-7100

Direct Income Withholding

(1) The administrator may send direct income withholding to an employer located in another jurisdiction when:

- (a) The employer is located in a jurisdiction which has adopted the direct withholding provisions of UIFSA; and
- (b) Any intergovernmental request about the same obligor and child is withdrawn and the responding agency is instructed to close their case; and
- (c) If required under OAR 137-055-7180, a controlling order has been determined.

(2) The administrator must ensure that the obligor is given the notice required by ORS 25.399.

(3) If the obligor files a written contest to the income withholding order in the employer's state, the administrator may dismiss the direct income withholding order and initiate an intergovernmental request for registration and enforcement.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.729, 110.303

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2340; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7100; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-7120

Responding Jurisdiction Responsibilities – General Provisions

(1) Within 75 calendar days of receipt of an Intergovernmental Child Support Enforcement Transmittal Form, a UIFSA Action Request Form or other form and documentation from the Oregon central registry, the administrator will:

- (a) Provide location services in accordance with 45 CFR 303.3 if appropriate;
- (b) If unable to proceed with the case because of inadequate documentation, request any necessary additions or corrections;
- (c) If the documentation received with a case is inadequate, response from the initiating agency.

(2) Within ten working days of locating the obligor in a different locale within the state, if appropriate, the administrator will forward the form and documentation to the appropriate office and notify the initiating agency.

(3) Within ten working days of locating the obligor outside of Oregon, the administrator will:

(a) Return the form and documentation, including the new location, to the initiating agency, or if directed by that agency, forward the form and documentation to the central registry where the obligor has been located; and

(b) Document the Oregon case record.

(4) Within 30 days of receiving a request, the administrator must provide any order and payment record information requested by another state's child support program for a controlling order determination, or advise the requesting state when the information will be provided.

(5) The administrator must provide to the initiating agency timely advance notice of any formal hearings which may result in establishment or modification of an order.

(6) The administrator must notify the initiating agency within ten working days of receipt of new information on a case.

(7) The administrator must cooperate with requests for the following limited services:

- (a) Quick locate;
- (b) Service of process;
- (c) Assistance with discovery;
- (d) Assistance with genetic testing;
- (e) Teleconferenced hearings;
- (f) Administrative reviews;
- (g) High-volume automated administrative enforcement in interstate cases under 42 USC 666(a)(14); and

(h) Copies of court orders and pay records; and may cooperate with other requests for limited services.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.729, 110.303 – 110.452

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2350; DOJ 6-

2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7120; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-7140

Oregon as Responding Jurisdiction – Establishing, Enforcing and Modifying Support and Medical Insurance Orders

(1) The registering tribunal under UIFSA is the circuit court of Oregon. This does not preclude action by other tribunals.

(2) Administrative contested case hearings shall be conducted by an administrative law judge pursuant to the provisions of ORS 416.427.

(3) Whenever allowed under the law, the administrator shall use the provisions of ORS 416.400 to 416.470 in conjunction with the provisions of ORS Chapter 110 to establish, enforce and modify support orders.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.729, 110.303 – 110.452

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2360; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7140; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-7160

Oregon as Responding Jurisdiction – Establishing Paternity

(1) When a request to establish paternity is received from another jurisdiction, the administrator must receive an affidavit of a parent naming the alleged father prior to initiating legal action.

(2) The administrator will use the provisions of ORS chapter 25, 109, 110 and 416 to establish paternity and support.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.729, 110.303 – 110.452

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2370; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7160; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-7180

Order Determining Controlling Order

(1) The administrator will determine a single controlling order when:

(a) Services are being provided under ORS 25.080 and two or more child support orders have been issued regarding the same obligor, child and obligee; or

(b) A party or other jurisdiction requests a determination.

(2) For purposes of this rule, any order modified or issued after October 20, 1994 (the effective date of the Full Faith and Credit for Child Support Orders Act, 28 USC 1738B), will be interpreted as a modification of all orders issued prior to October 20, 1994, unless:

(a) The tribunal entering the order did not have jurisdiction to do so;

or

(b) A party alleges the tribunal lacked personal or subject matter jurisdiction.

(3) When a request for a controlling order determination is received from another jurisdiction:

(a) The request is not complete until documents necessary to perform the determination are received; and

(b) The request is considered "filed with the appropriate tribunal" as required by 45 CFR 303.7(5) when the administrator receives the complete request.

(4) The administrator will determine the controlling order and issue an order setting out the determination. The order is an order in an other than contested case proceeding under ORS chapter 183. The order will be served upon the parties by certified mail, return receipt requested, at the last known address of the parties. The order must include:

(a) The basis for personal jurisdiction over the parties;

(b) The names of the parties and the child for whom support was ordered;

(c) A statement of each child support order which was considered, the jurisdiction which issued the order and the date of the order;

(d) A statement identifying the order the administrator determines is the controlling order and why;

(e) A statement that the controlling order determination is effective the date the order is issued by the administrator;

(f) A reference to ORS 110.333;

(g) A notice that a party may submit further information and petition the administrator for reconsideration of the order within 60 days of the date of the order;

(h) A notice that OAR 137-004-0080 applies to any petition for reconsideration; and

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(i) A notice that a party may appeal the order as provided by ORS 183.484.

(5) If the administrator determines that no tribunal has continuing, exclusive jurisdiction under ORS chapter 110, the administrator will notify the parties and establish a new child support order.

(6) For the purposes of determining the Oregon county in which the administrator may enter the order determining the controlling order, the following provisions apply:

(a) If one or more Oregon court files exist for the same obligor and child, the order will be entered in each existing court file;

(b) If an Oregon court file does not exist, the administrator will enter the documents required by ORS 416.440 in the circuit court in the county where the party who lives in Oregon resides.

(7) Within 30 days after the expiration of the appeal or reconsideration period, the administrator will certify copies of the order determining the controlling order and file one with each tribunal that issued or registered an earlier order of child support.

(8) Upon written receipt of an order determining the controlling order that a tribunal of this or another jurisdiction properly issued, the administrator will:

(a) Adjust the Oregon case record to cease prospective accrual on any noncontrolling order and initiate accrual on any controlling order which was issued or registered by an Oregon tribunal on the date specified in the order determining controlling order or, when not specified, in accordance with OAR 137-055-5040; and

(b) When one of the noncontrolling orders was issued by an Oregon tribunal, ensure that the order determining the controlling order is entered in the Oregon circuit court for the county which issued or entered the prior order.

Stat. Auth.: ORS 25.729 & 180.345
Stats. Implemented: ORS 110.327 & 110.333
Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2385; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7180; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7180; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

137-055-7190

Review and Modification In Intergovernmental Cases

(1) Within 15 days of a party's request for a periodic review or a request for a modification based upon a change of circumstances, the administrator will determine in which jurisdiction the review will be sought. The administrator will follow the Uniform Interstate Family Support Act (UIFSA) provisions in ORS 110.303 through 110.452 in making this decision, including:

(a) If the controlling order is an Oregon support order and the obligor, obligee and child reside in this state, Oregon will do the review.

(b) If the controlling order is an Oregon support order and one of the parties or the child resides in this state, Oregon will do the review, presuming personal jurisdiction can be asserted for the remaining party.

(c) If Oregon does not have the controlling order but all the parties have filed in the jurisdiction which has the controlling order a written consent for Oregon to modify the order, Oregon will do the review.

(d) If an order has been registered for enforcement in Oregon and none of the parties or the child resides in the jurisdiction which issued the order, the jurisdiction where the non-requesting party resides will do the review.

(2) If the administrator determines that Oregon is not the appropriate reviewer, the administrator will:

(a) Determine and obtain the information needed;

(b) Complete any required forms; and

(c) Send all required documents to the reviewer within 20 calendar days of receipt;

(3)(a) If the reviewer is currently providing services for Oregon on the case, the documents will be transmitted to the appropriate office or agency working the case;

(b) If the request is the first contact with the reviewer for the case, the request must be sent to the reviewer's central registry.

Stat. Auth.: ORS 25.080, 25.287, 180.345
Stats. Implemented:
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11

Department of Public Safety Standards and Training
Chapter 259

Rule Caption: Update course hours/titles for DOC Basic Corrections Course curriculum; Implement plain language standards.

Adm. Order No.: DPSST 2-2011
Filed with Sec. of State: 3-23-2011
Certified to be Effective: 5-1-11
Notice Publication Date: 3-1-2011
Rules Amended: 259-008-0025

Subject: The Department of Public Safety Standards and Training updated its Basic Corrections curriculum and subject/hour breakdown in May 2010. This rule update adjusts the minimum course hours for the Department of Corrections Basic Corrections Course to reflect those updates. Plain language standards and housekeeping changes were also made for clarity and consistency.

Rules Coordinator: Linsay Bassler—(503) 378-2431

259-008-0025

Minimum Standards for Training

(1) Basic Course:

(a) Except as provided in OAR 259-008-0035, all law enforcement officers, telecommunicators, and emergency medical dispatchers must satisfactorily complete the prescribed Basic Course, including the field training portion. The Basic Course and field training portion must be completed within twelve months from the date of employment by corrections officers and within 18 months by police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers.

(b) The field training program shall be conducted under the supervision of the employing department. When the field training manual is properly completed, the sign-off pages of the field training manual must be forwarded to the Department. Upon the approval of the Department, the employee shall receive credit toward basic certification.

(c) Effective July 1, 2007, all police officers must satisfactorily complete the Department's physical fitness standard. The Department's physical standard is:

(A) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested upon entry at the Basic Police Course; or

(B) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested prior to graduation from the Basic Police Course.

(d) Law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as defined in ORS 181.610 and OAR 259-008-0005 during the last five (5) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon a finding that the applicant has current knowledge and skills to perform as an officer.

(e) Telecommunicators and emergency medical dispatchers who have previously completed the Basic Course, but have not been employed as a telecommunicator or EMD, as described in ORS 181.610 and OAR 259-008-0005 for two and one-half (2-1/2) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon finding that a Telecommunicator has current knowledge and skills to perform as a Telecommunicator. There is no waiver available for an emergency medical dispatcher.

(f) Previously employed telecommunicators may challenge the Basic Telecommunications Course based on the following criteria:

(A) The department head of the applicant's employing agency shall submit the "challenge request" within the time limits set forth in the Oregon Revised Statutes and Oregon Administrative Rules.

(B) The applicant must provide proof of successful completion of prior equivalent training.

(C) The applicant must provide documentation of the course content with hour and subject breakdown.

(D) The applicant must obtain a minimum passing score on all written examinations for the course.

(E) The applicant must demonstrate performance at the minimum acceptable level for the course.

(F) Failure of written examination or demonstrated performance shall require attendance of the course challenged.

(G) The applicant will only be given one opportunity to challenge a course.

(g) Previously employed police officers, corrections officers and parole and probation officers who are required to attend the Basic Course may not challenge the Basic Course.

(h) All law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as

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described in ORS 181.610 and OAR 259-008-0005 over two and one-half (2-1/2) years but less than five (5) years must complete a Career Officer Development Course if returning to the same discipline. This requirement may be waived after a staff determination that the applicant has demonstrated the knowledge and skills required for satisfactory completion of a Career Officer Development Course.

(i) Corrections and police officers who have not completed the Basic Course must begin training within 90 days of their initial date of employment.

(A) A police officer must begin training at an academy operated by the Department.

(B) A corrections officer who is employed by Oregon Department of Corrections (DOC) during the period July 1, 2009 through January 1, 2014 must begin DOC Basic Corrections Course (DOC BCC) training provided by DOC as described in section (6) of this rule.

(C) A corrections officer who is not employed by DOC must begin training at an academy operated by the Department.

(D) A 30-day extension of this time period shall be granted by the Board or its designee upon receipt of a written statement of the reasons for the delay from the officer's employer. Any delays caused by the inability of the Department to provide basic training for any reason, shall not be counted as part of the periods set forth above (refer to ORS 181.665 and 181.652).

(j) Law enforcement officers who have previously completed a basic training course out of state while employed by a law enforcement unit, or public or private safety agency, may, upon proper documentation of such training and with approval of the Department, satisfy the requirements of this section by successfully completing a prescribed Career Officer Development Course or other appropriate course of instruction.

(k) The basic course for police officers must include:

(A) Training on the law, theory, policies and practices related to vehicle pursuit driving;

(B) Vehicle pursuit training exercises, subject to the availability of funding; and

(C) A minimum of 24 hours of training in the recognition of mental illnesses utilizing a crisis intervention training model. A minimum of one hour of this training must be on the appropriate use of the medical health database maintained by the Department of State Police within the Law Enforcement Data System.

(2) Career Officer Development Course:

(a) All law enforcement officers who have not been employed as such for between two and one half (2-1/2) years and five (5) years, must satisfactorily complete a Career Officer Development Course approved by the Department.

(b) A law enforcement officer assigned to a Career Officer Development Course must also complete the Board's field training program under the supervision of the employing department and submit to the Department a properly completed Field Training Manual. The Department may waive the Field Training Manual requirement upon demonstration by the employing agency that it is not necessary [refer to OAR 259-008-0025(1)(b)].

(A) A law enforcement officer who fails to achieve a minimum passing test score after completing a Career Officer Development Course will be given one opportunity to remediate through self-study and re-test within 60 days of the initial date of failure.

(B) A law enforcement officer who fails to achieve a minimum passing test score after re-testing will have been determined to have failed academically and will be required to attend the next available Basic Course.

(C) A law enforcement officer who is scheduled to complete a distance learning COD Course must achieve a minimum passing test score within the timeframe set by the Department. Failure to successfully complete a distance COD Course within the timeframe set by the Department will require an officer to attend the next available COD Course.

(c) The Department may also require successful completion of additional specified courses or remedial training.

(3) Supervision Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a first-level supervisory position must satisfactorily complete Supervision training that complies with the requirements outlined in DPSST Form F-21. The required training must be completed within 12 months after initial promotion, appointment, or transfer to such position. This section applies whether the individual is promoted or transferred to a supervisory position within a department, or is appointed from an outside department, without having completed the required Supervision training within the preceding five (5) years.

(4) Middle Management Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a middle management position must satisfactorily complete Middle Management training that complies with the requirements outlined in DPSST Form F-22. The required training must be completed within 12 months after initial promotion, appointment, or transfer to such position. This section applies whether the individual is promoted or transferred to a middle management position within a department, or is appointed to the position from an outside department without having completed the required Middle Management training within the preceding five (5) years.

(5) Specialized Courses.

(a) Specialized courses are optional and may be presented at the Academy or regionally. The curriculum is generally selected because of relevancy to current trends and needs in police, corrections, parole and probation, telecommunications, and emergency medical dispatch fields, at the local or statewide level.

(b) Specialized courses may be developed and presented by individual departments of the criminal justice system, local training districts, a college, the Department, or other interested persons. Department staff may be available to provide assistance when resources are not available in the local region.

(c) Police officers, including certified reserve officers, must be trained on how to investigate and report cases of missing children and adults.

(A) The above mandated training is subject to the availability of funds.

(B) Federal training programs must be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

(6) The DOC Basic Corrections Course.

Course Requirements

(a) Except as provided in OAR 259-008-0035, all corrections officers hired by the Oregon Department of Corrections (DOC) on or after July 1, 2009, but prior to January 1, 2014, must satisfactorily complete the DOC Basic Corrections Course (DOC BCC), including the field training portion. All corrections officers must complete the DOC BCC and field training portion must be completed within twelve months from the date of employment.

(b) Prior to attending a DOC BCC, a corrections officer hired by DOC on or after July 1, 2009, but prior to January 1, 2014, must:

(A) Meet the minimum standards for employment as a law enforcement officer contained in OAR 259-008-0010;

(B) Meet the background investigation requirements for a law enforcement officer contained in OAR 259-008-0015; and

(C) Meet the minimum standards for training contained in this section.

(c) The DOC BCC must conform to the content and standard approved by the Board. The DOC BCC must include, but is not limited to:

(A) Minimum training standards for the basic certification of corrections officer employed by DOC. The minimum training developed by DOC must be adopted by the Board and must meet or exceed the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than DOC.

(B) Minimum Course Hours. The DOC BCC must include, at a minimum, the following:

(i) Section A – 22 hours in Law and Legal Topics;

(ii) Section B – 20 hours in Community Relations and Human Behavior;

(iii) Section C – 35 hours in Security;

(iv) Section D – 10 hours in Investigations;

(v) Section E – 27 hours in Health and Safety;

(vi) Section F – 8 hours in Mental Health;

(vii) Section G – 37 hours in Skills – Survival; and

(viii) Section H – 24 hours in Skills – Firearms.

(ix) Administrative time is not included within the hours identified above.

(C) Attendance Standards. Attendance rosters must be kept and copies of these rosters must be submitted to the Department at the conclusion of a student's training, or when requested by the Department. To successfully complete the DOC BCC, a student may not miss more than 10% of the DOC BCC.

(D) Notwithstanding (C) above, successful completion of the DOC BCC requires 100% attendance at the following mandatory classes:

(i) Health and Fitness;

(ii) Defensive Tactics;

(iii) Firearms;

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- (iv) Medical Escorts/Restraints;
- (v) Contraband/Searches;
- (vi) Report Writing; and
- (vii) Reality Based Training.

(E) Conduct. An individual attending a DOC BCC is expected to uphold the minimum moral fitness standards for Oregon public safety officers during their training. DOC will document the date, type, and disposition of any student misconduct relating to the minimum standards for correctional officers. These include, but are not limited to, the following Zero Tolerance Offenses:

- (i) Any unlawful act;
 - (ii) Dishonesty, lying or attempting to conceal violations;
 - (iii) Cheating;
 - (iv) Harassment; or
 - (v) Alcohol possession or use at the training venue.
- (F) Course Curriculum.

(i) The DOC BCC will be based on the critical and essential job tasks identified in the most current Job Task Analysis for corrections officers provided to DOC by the Department.

(ii) The DOC BCC will incorporate the most current Learning Goals provided to DOC by the Department.

(iii) The DOC BCC will incorporate curriculum updates provided to DOC by the Department, when those updates address the critical and essential job tasks or Learning Goals referenced above.

Testing Requirements

(G) Academic Testing. Academic testing will consist of written test questions that are valid, create reasonable academic rigor, and require students to demonstrate knowledge and application of the essential tasks identified within the DOC BCC curriculum. DOC must administer examinations and maintain a file of examinations conducted.

(i) Academic Testing Passing Score. Except as provided below, to successfully complete the DOC BCC, students must achieve a minimum score of 75% on each academic test. If a student does not attain a 75% score, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. After remediation, a student will be allowed one opportunity to re-test and achieve a minimum score of 75%.

(ii) Students must attain a score of 100% on all academic test questions on Use of Force topics. If a student fails to attain a 100% score on Use of Force topics, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. Remediation must include the student completing the DPSST Use of Force Remediation form to demonstrate understanding of each topic missed.

(H) Skills Testing. Skills testing will consist of evaluations documented by use of Skills Sheets during which students must demonstrate competence and achieve a "pass" score in each skill tested.

(I) Test Security and Integrity.

(i) DOC must develop and strictly enforce measures to ensure the security of test questions and integrity of all testing processes.

(ii) DOC must randomize the order of test questions and must develop a sufficient bank of test questions to ensure that students who fail to achieve a passing score and are remediated are given a randomized test that includes some questions that are different than those in the test the student originally failed.

Instructor Requirements

(J) Instructor Qualifications. All instructors for the DOC BCC must meet or exceed the Instructor Certification standards for instructors at DPSST Basic courses and must be currently certified by the Department in the categories instructed.

Documentation Requirements

(K) Required documentation for the DOC BCC must include, but is not limited to:

- (i) Name, DPSST number and employing institution of each student;
- (ii) Topics;
- (iii) Number of training hours per topic;
- (iv) Name, DPSST number, and topics taught for all instructors utilized;
- (v) Total hours attended per student;
- (vi) Any student absences;
- (vii) Any remediation of training;
- (viii) Any instructor notes or observations relating to any students' performance during the training; and
- (ix) All academic and skills testing for each student.

Certification Requirements

(L) Officer Certification. The applicant must meet the minimum standards for certification as a corrections officer contained in OAR 259-008-

0060. DOC must submit the following documents at the time Basic certification is requested:

- (i) F-7 (Application for Certification);
- (ii) F-6 (Course Roster) for DOC BCC including the number of hours and the final cumulative score;
- (iii) F-6 (Course Roster) for DOC Advanced Corrections Course with attached itemized list of classes attended;
- (iv) Proof of current First Aid/CPR;
- (v) F-11 (Criminal Justice Code of Ethics); and
- (vi) FTO Manual Completion Report.

(7) Waiver. A person requesting a waiver of any course requirements is required to submit to the Department any supporting documents or pertinent expert testimony and evaluation requested. Any expense associated with providing such documentation, testimony or evaluation shall be borne by the person requesting the waiver or the requesting agency.

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1982, f. & ef. 7-2-82; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0030, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 5-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 2-2002, f. & cert. ef. 2-6-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 15-2002, f. & cert. ef. 7-5-02; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 14-2008, f. & cert. ef. 10-15-08; DPSST 3-2009, f. & cert. ef. 4-8-09; DPSST 8-2009(Temp), f. & cert. ef. 9-15-09 thru 3-1-10; DPSST 15-2009, f. & cert. ef. 12-15-09; DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10; DPSST 2-2011, f. 3-23-11, cert. ef. 5-1-11

Rule Caption: Update rule to remain consistent and current with 2008 Edition of NFPA 1006 standards.

Adm. Order No.: DPSST 3-2011

Filed with Sec. of State: 3-28-2011

Certified to be Effective: 5-1-11

Notice Publication Date: 3-1-2011

Rules Amended: 259-009-0005, 259-009-0062

Subject: The BPSST/DPSST National Fire Protection Agency (NFPA) Rescuer Technician Task Force originally met with the approval of the Fire Policy Committee in August, 2010. The task force concluded that there is significant training value in remaining consistent and current with the NFPA standards at the national level. Updates include technical changes to the titles, definitions, and standards of Technical Rescuer.

Rules Coordinator: Linsay Bassler—(503) 378-2431

259-009-0005

Definitions

(1) "Authority having jurisdiction" means the Department of Public Safety Standards and Training.

(2) "Agency Head" means the chief officer of a fire service agency directly responsible for the administration of that unit.

(3) "Board" means the Board on Public Safety Standards and Training.

(4) "Cargo Tank Specialty" means a person who provides technical support pertaining to cargo tank cars, provided oversight for product removal and movement of damaged cargo tanks, and acts as liaison between technicians and outside resources.

(5) "Chief Officer" means an individual of an emergency fire agency at a higher level of responsibility than a company officer. A chief officer supervises two or more fire companies in operations or manages and supervises a particular fire service agency program such as training, communications, logistics, prevention, emergency medical services provisions and other staff related duties.

(6) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(7) "Company Officer" means a fire officer who supervises a company of fire fighters assigned to an emergency response apparatus.

(8) "Content Level Course" is a course that includes an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

ADMINISTRATIVE RULES

(9) "Department" means the Department of Public Safety Standards and Training.

(10) "Director" means the Director of the Department of Public Safety Standards and Training.

(11) "Entry Level Fire Fighter" means an individual at the beginning of his/her fire service involvement. During the probationary period an entry level fire fighter is in a training and indoctrination period under constant supervision by a more senior member of a fire service agency.

(12) "Field Training Officer" means an individual who is authorized by a fire service agency of by the Department to sign as verifying completion of tasks required by task books.

(13) "Fire Company" means a group of fire fighters, usually 3 or more, who staff and provide the essential emergency duties of a particular emergency response apparatus.

(14) "Fire Fighter" is a term used to describe an individual who renders a variety of emergency response duties primarily to save lives and protect property. This applies to career and volunteer personnel.

(15) "Fire Ground Leader" means a Fire Service Professional who is qualified to lead emergency scene operations."

(16) "Fire Inspector" means an individual whose primary function is the inspection of facilities in accordance with the specific jurisdictional fire codes and standards.

(17) "Fire Service Agency" means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, fire protection services.

(18) "Fire Service Professional" means a paid (career) or volunteer fire fighter, an officer or a member of a public or private fire protection agency who is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. "Fire service professional" does not include forest fire protection agency personnel.

(19) "Fire Training Officer" means a fire service member assigned the responsibility for administering, providing, and managing and/or supervising a fire service agency training program.

(20) "First Responder" means an "Operations Level Responder"

(21) "Hazardous Materials Safety Officer" means a person who works within an incident management system (IMS) (specifically, the hazardous materials branch/group) to ensure that recognized hazardous materials/WMD safe practices are followed at hazardous materials/weapons of mass destruction (WMD) incidents.

(22) "Hazardous Materials Technician" means a person who responds to hazardous materials/weapons of mass destruction (WMD) incidents using a risk-based response process by which they analyze a problem involving hazardous materials/weapons of mass destruction (WMD), select applicable decontamination procedures, and control a release using specialized protective and control equipment.

(23) "Incident Commander" (IC) means a person who is responsible for all incidents activities, including the development of strategies and tactics and the ordering and release of resources.

(24) "Intermodal Tank Specialty" means a person who provides technical support pertaining to intermodal tanks, provided oversight for product removal and movement of damaged intermodal tanks, and acts as a liaison between technicians and outside resources.

(25) "Marine Tank Vessel Specialty" means a person who provides technical support pertaining to marine tank vessels, provided oversight for product removal and movement of damaged marine tank vessels, and acts as a liaison between technicians and outside resources.

(26) "NFPA" stands for National Fire Protection Association which is a body of individuals representing a wide variety of professions, including fire protection, who develop consensus standards and codes for fire safety by design and fire protection agencies.

(27) "NFPA Aircraft Rescue and Fire-Fighting Apparatus" means a Fire Service Professional who has met the requirements of Fire Fighter II as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4, NFPA Airport Fire Fighter as specified in NFPA 1003 and the job performance requirements defined in NFPA 1002 Sections 9.1 and 9.2.

(28) "NFPA Airport Firefighter" means a member of a Fire Service Agency who has met job performance requirements of NFPA Standard 1003.

(29) "NFPA Apparatus Equipped with an Aerial Device" means a Fire Service Professional who has met the requirements of Fire Fighter I as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in

NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 6.1 and 6.2.

(30) "NFPA Apparatus Equipped with a Tiller" means a Fire Service Professional who has met the requirements of Fire Fighter I as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4, Apparatus Equipped with an Aerial Device as specified in NFPA 1002 Chapter 6 and the job performance requirements defined in NFPA 1002 Sections 7.2.

(31) "NFPA Apparatus Equipped with Fire Pump" means a Fire Service Professional who has met the requirements of Fire Fighter I as specified in NFPA 1001, Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 5.1 and 5.2.

(32) "NFPA Confined Space Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 7 sections 7.1 and 7.2.

(33) "NFPA Fire Apparatus Driver/Operator" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1002, Chapter 4 sections 4.2 and 4.3.

(34) "NFPA Fire Fighter I" means a member of a fire service agency who has met the Level I job performance requirements of NFPA standard 1001. Sometimes referred to as a journeyman fire fighter.

(35) "NFPA Fire Fighter II" means a member of a fire service agency who met the more stringent Level II job performance requirements of NFPA Standard 1001. Sometimes referred to as a senior fire fighter.

(36) "NFPA Fire Inspector I" means an individual who conducts basic fire code inspections and has met the Level I job performance requirements of NFPA Standard 1031.

(37) "NFPA Fire Inspector II" means an individual who conducts complicated fire code inspections, reviews plans for code requirements, and recommends modifications to codes and standards. This individual has met the Level II job performance requirements of NFPA standard 1031.

(38) "NFPA Fire Inspector III" means an individual at the third and most advanced level of progression who has met the job performance requirements specified in this standard for Level III. The Fire Inspector III performs all types of fire inspections, plans review duties, and resolves complex code-related issues.

(39) "NFPA Fire Investigator" means an individual who conducts post fire investigations to determine the cause and the point of origin of fire. This individual has met the job performance requirements of NFPA Standard 1033.

(40) "NFPA Fire Officer I" means the fire officer, at the supervisory level, who has met the job performance requirements specified in NFPA 1021 Standard Fire Officer Professional Qualifications. (Company officer rank)

(41) "NFPA Fire Officer II" means the fire officer, at the supervisory/managerial level, who has met the job performance requirements in NFPA Standard 1021. (Station officer, battalion chief rank)

(42) "NFPA Fire Officer III" means the fire officer, at the managerial/administrative level, who has met the job performance requirements in NFPA Standard 1021. (District chief, assistant chief, division chief, deputy chief rank)

(43) "NFPA Fire Officer IV" means the fire officer, at the administrative level, who has met the job performance requirements in NFPA Standard 1021. (Fire Chief)

(44) "NFPA Instructor I" means a fire service instructor who has demonstrated the knowledge and ability to deliver instruction effectively from a prepared lesson plan, including instructional aids and evaluation instruments; adapt lesson plans to the unique requirements of the students and authority having jurisdiction; organize the learning environment so that learning is maximized; and meet the record-keeping requirements of authority having jurisdiction.

(45) "NFPA Instructor II" means a fire service instructor who, in addition to meeting Instructor I qualifications, has demonstrated the knowledge and ability to develop individual lesson plans for a specific topic including learning objectives, instructional aids, and evaluation instruments; schedule training sessions based on overall training plan of authority having jurisdiction; and supervise and coordinate the activities of other instructors.

(46) "NFPA Instructor III" means a fire service instructor who, in addition to meeting Instructor II qualifications, has demonstrated the knowledge and ability to develop comprehensive training curricula and programs for use by single or multiple organizations; conduct organization needs analysis; and develop training goals and implementation strategies.

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(47) "NFPA Marine Land-Based Fire Fighter" means a member of a fire service agency who meets the job performance requirements of NFPA 1005.

(48) "NFPA Mobile Water Supply Apparatus" means a Fire Service Professional who has met the requirements of Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 10.1 and 10.2.

(49) "NFPA Rope Rescue – Level I" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 section 6.1.

(50) "NFPA Rope Rescue – Level II" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 section 6.2.

(51) "NFPA Surface Water Rescue – Level I" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 11 section 11.1.

(52) "NFPA Surface Water Rescue – Level II" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 11 section 11.2.

(53) "NFPA Swiftwater Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 6 sections 6.1 and 6.2, Chapter 11 sections 11.1 and 11.2, and Chapter 12 sections 12.1 and 12.2.

(54) "NFPA Trench Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 8 sections 8.1 and 8.2.

(55) "NFPA Structural Collapse Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 9 sections 9.1 and 9.2.

(56) "NFPA Vehicle and Machinery Rescue" means a Fire Service Professional who has met the job performance requirements defined in NFPA 1006, Chapter 10 sections 10.1 and

(57) "NFPA Wildland Fire Apparatus" means a Fire Service Professional who has met the requirements of Fire Apparatus Driver/Operator as specified in NFPA 1002 Chapter 4 and the job performance requirements defined in NFPA 1002 Sections 8.1 and 8.2.

(58) "Operations Level Responder" means a person who responds to hazardous materials/weapons of mass destruction (WMD) incidents for the purpose of implementing or supporting actions to protect nearby persons, the environment, or property from the effects of the release.

(59) "Service Delivery" means to be able to adequately demonstrate, through job performance, the knowledge, skills, and ability of a certification level.

(60) "Staff" means those employees occupying full-time, part-time, and/or temporary positions with the Department.

(61) "Tank Car Specialty" means a person who provides technical support pertaining to tank cars, provided oversight for product removal and movement of damaged tank cars, and acts as a liaison between technicians and outside resources.

(62) "Task Performance" means to be able to demonstrate the ability to perform the tasks, of a certification level, in a controlled environment while being evaluated.

(63) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(64) "Topical Level Course" is a course that does not include an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(65) "Track" means a field of study required for certification.

(66) "Waiver" means to refrain from pressing or enforcing a rule.

(67) "Wildland Interface Crew Boss" means a person who is in supervisory position in charge of 16 to 21 fire fighters and is responsible for their performance, safety, and welfare.

(68) "Wildland Interface Division/Group Supervisor" means a person who is responsible to act in an ICS position responsible for commanding and managing resources on a particular geographic area of a wildland fire. Reports to a Branch Director or Operations Section Chief.

(69) "Wildland Interface Engine Boss" means a person who is in supervisory position who has demonstrated the skills and depth of knowledge necessary to function under general supervision while operating a piece of apparatus such as an engine.

(70) "Wildland Interface Fire Fighter" means a person at the first level of progression who demonstrated the knowledge and skills necessary to function safely as a member of a wildland fire suppression crew whose principal function is fire suppression. This position has direct supervision.

(71) "Wildland Interface Strike Team Leader Crew" means a person who is responsible to act in an ICS position and is responsible for the direct supervision of a crew strike team.

(72) "Wildland Interface Strike Team Leader Engine" means a person who is responsible to act in an ICS position and is responsible for the direct supervision of an engine strike team.

(73) "Wildland Interface Structural Group Supervisor" means a person who is responsible to act in an ICS position responsible for supervising equipment and personnel assigned to a group. Groups are composed of resources assembled to perform a special function not necessarily within a single geographic division. Groups, when activated, are located between branches and resources in the operations section. Reports to a Branch Director or Operations Section Chief.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006, f. & cert. ef. 7-7-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09; DPSST 16-2009(Temp), f. & cert. ef. 12-15-09 thru 6-11-10; DPSST 5-2010, f. 6-11-10, cert. ef. 6-14-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 3-2011, f. 3-28-11, cert. ef. 5-1-11

259-009-0062

Fire Service Personnel Certification

(1) A fire service professional affiliated with an Oregon fire service agency may be certified by satisfactorily completing the requirements specified in section (2) of this rule: through participation in a fire service agency training program accredited by the Department; or through a course certified by the Department; or by evaluation of experience as specified in OAR 259-009-0063. The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance Evaluations (TPE) if applicable.

(2) The following standards for fire service personnel are hereby adopted by reference:

(a) The provisions of the NFPA Standard 1001, 2008 Edition, entitled "Fire Fighter Professional Qualifications";

(A) "Authority having jurisdiction" means the Department of Public Safety Standards and Training.

(B) Delete section 1.3.1.

NOTE: This references NFPA 1500.

(C) Delete section 2.2.

NOTE: This references NFPA 1500 and 1582.

(D) Entry Level Fire Fighter means an individual trained to the requirements of Section 2-1 Student Prerequisites, NFPA Standard 1403, 1997 Edition, entitled "Live Fire Training Evolutions" and the applicable safety requirements adopted by OR-OSHA. An individual trained to this level and verified so by the agency head is qualified to perform live-fire training exercises and to perform on the emergency scene under constant supervision. An Entry Level Fire Fighter should be encouraged to complete Fire Fighter I training within one year.

(E) Before an applicant can qualify for certification, the applicant must complete either a Task Performance Evaluation or a Department approved Task Book for Fire Fighter I and Fire Fighter II, signed off by the Agency Head or Training Officer.

(b) The provisions of the NFPA Standard 1002, 2009 Edition, entitled "Standard for Fire Apparatus Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications hereinafter stated:

(A) 5.1 General. The job performance requirements defined in Sections 5.1 and 5.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Pumper.

(B) 6.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 6.1 and 6.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aerial.

(C) 7.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 7.1 and 7.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Tiller.

(D) 8.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 8.1 and 8.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Wildland Fire Apparatus.

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(E) 9.1 General. The requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 9.1 and 9.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aircraft Rescue and Fire Fighting Apparatus (ARFF).

(F) 10.1 General. The requirements of NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 10.1 and 10.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Mobile Water Supply Apparatus.

(G) Delete “the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program”.

(H) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for: Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Fire-Fighting Apparatus Operator or Mobile Water Supply Apparatus Operator and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(c) The provisions of the NFPA Standards 1003, 2005 Edition, entitled “Standard for Airport Fire Fighter Professional Qualifications.”

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Aircraft Rescue and Fire Fighting Apparatus Operator (ARFF), as specified by the Department, and the job performance requirements defined in sections 6.1 through 6.4 must be met.

(B) All applicants for certification must complete either a Task Performance Evaluation or a Department-approved Task Book for: Airport Fire Fighter and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(d) The provisions of NFPA Standard 1005, 2007 Edition, entitled “Marine Fire Fighting for Land Based Fire Fighters Professional Qualifications,” are adopted subject to the following definitions and modifications:

(A) “Authority having jurisdiction” means the Department of Public Safety Standards and Training.

(B) Delete section 2.2.

NOTE: This references NFPA 1500.

(C) Delete sections of 2.4.

NOTE: This references NFPA 1000, NFPA 1081, NFPA 1405, NFPA 1670 and NFPA 1710.

(D) 5.1 General. Prior to certification as a Fire Service Agency NFPA 1005 Marine Land-Based Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department.

(E) All applicants for certification must complete a Department approved Task Book for: Marine Fire Fighting for Land Based Fire Fighters and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(e) The provisions of the NFPA Standards 1003, 2005 Edition, entitled “Standard for Airport Fire Fighter Professional Qualifications.”

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Aircraft Rescue and Fire Fighting Apparatus Operator (ARFF), as specified by the Department, and the job performance requirements defined in sections 6.1 through 6.4 must be met.

(B) All applicants for certification must complete either a Task Performance Evaluation or a Department-approved Task Book for: Airport Fire Fighter and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(f) The provisions of NFPA Standard 1005, 2007 Edition, entitled “Marine Fire Fighting for Land Based Fire Fighters Professional Qualifications,” are adopted subject to the following definitions and modifications:

(A) “Authority having jurisdiction” means the Department of Public Safety Standards and Training.

(B) Delete section 2.2.

NOTE: This references NFPA 1500.

(C) Delete sections of 2.4.

NOTE: This references NFPA 1000, NFPA 1081, NFPA 1405, NFPA 1670 and NFPA 1710.

(D) 5.1 General. Prior to certification as a Fire Service Agency NFPA 1005 Marine Land-Based Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department.

(E) All applicants for certification must complete a Department approved Task Book for: Marine Fire Fighting for Land Based Fire Fighters and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(F) Transition Phase:

(i) An application for certification in Marine Fire Fighting for Land Based Fire Fighters must be submitted to the Department no later than June 30, 2009 to receive consideration for certification without having to complete a task book.

(ii) All applications received on or after July 1, 2009, will need to show completion of the approved task book.

(g) The provisions of the NFPA Standard No. 1031, Edition of (2009), entitled “Professional Qualifications for Fire Inspector and Plan Examiner” are adopted.

(A) All applicants for certification as an NFPA Fire Inspector I must:

(i) Successfully complete a Department approved Task Book; and

(ii) Furnish proof that they have passed an exam demonstrating proficiency in the model fire code adopted by the State of Oregon or an equivalent.

(B) All applicants for certification as an NFPA Fire Inspector II must:

(i) Hold a certification as a Fire Inspector I; and

(ii) Successfully complete a Department approved Task Book.

(C) All applicants for certification as an NFPA Fire Inspector III must:

(i) Hold a certification as a Fire Inspector II; and

(ii) Successfully complete a Department approved Task Book.

(D) Task books must be monitored by a Field Training Officer approved by the Department. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years inspection experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department staff.

(h) The provisions of the NFPA Standard No. 1033, Edition of (2009), entitled “Professional Qualifications for Fire Investigator” are adopted subject to the following definitions and requirements:

(A) An individual must successfully complete a Department approved Task Book before the Department will administer a written examination for the Fire Investigator certification level. Exception: Anyone holding a valid IAAI Fire Investigator Certification, National Association of Fire Investigators (NAFI) certification, or Certified Fire Explosion Investigators (CFEI) certification is exempt from taking the Department’s Fire Investigator written exam.

(B) A Department approved Field Training Officer must monitor the completion of a Task Book. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years fire investigation experience. Exception: The Department may approve a Field Training Officers with equivalent training, education and experience.

(i) The provisions of the NFPA Standard No. 1035, Edition of 2000, entitled “Professional Qualifications for Public Fire and Life Safety Educator” are adopted subject to the following definitions and modifications:

(A) Chapter 6 (Six) “Juvenile Firesetter Intervention Specialist I” and Chapter 7 (Seven) “Juvenile Firesetter Intervention Specialist II,” Oregon-amended, shall be adopted with the following changes:

(i) Change the following definitions:

(I) 1-4.4 Change the definition of “Assessment” to read: “A structured process by which relevant information is gathered for the purpose of determining specific child or family intervention needs conducted by a mental health professional.”

(II) 1-4.11 Change the title of “Fire Screener” to “Fire Screening” and the definition to read “The process by which we conduct an interview with a firesetter and his or her family using state approved forms and guidelines. Based on recommended practice, the process may determine the need for referral for counseling and/or implementation of educational intervention strategies to mitigate effects of firesetting behavior.”

(III) 1-4.14 Include “insurance” in list of agencies.

(IV) 1-4.15 Change the definition to read: “...that may include screening, education and referral for assessment for counseling, medical services.”

(V) 1-4.16 Change “person” to “youth” and change age from 21 to 18.

(VI) 1-4.17 Add “using state-approved prepared forms and guidelines.”

(VII) 1-4.22 Add “...or by authority having jurisdiction.”

(VIII) 1-4.24 Add “...or as defined by the authority having jurisdiction.”

(ii) Under 6-1 General Requirements, delete the statement, “In addition, the person shall meet the requirements for Public Fire and Life Safety Educator I prior to being certified as a Juvenile Firesetter Intervention Specialist I.”

(B) A task book shall be completed prior to certification as a Public Fire and Life Safety Educator I, II or III.

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(C) A task book shall be completed prior to certification as a Public Information Officer.

(D) A task book shall be completed prior to certification as a Juvenile Firesetter Intervention Specialist I and II.

(j) The provisions of the NFPA Standard No. 1041, Edition of 2007, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) "Fundamentals of Instruction" shall mean a 16-hour instructor training course for those instructors used for in-house training. This course includes a task book. This course does not lead to certification.

(B) Successfully complete an approved task book for Fire Service Instructor I and II. This requirement is effective for any application for certification after January 4, 2002.

(k) The provisions of the NFPA Standard 1021, 2009 Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 4.1 General. For certification as Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections 4.1 through 4.7 of this Standard.

(i) Amend section 4.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Communications, Math, Physics, Chemistry, or Fire Behavior and Combustion. Refer to the suggested course guide for detailed course, curriculum and training information.

(ii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for; NFPA Fire Officer I and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section 5.1 through 5.7 of the Standard.

(i) Amend section 5.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Psychology or Sociology.

(ii) Amend section 5.3 Community and Government Relations to include State and Local Government or Department approved equivalent courses.

(iii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for NFPA Fire Officer II, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II, NFPA, NFPA 1041 Fire Instructor II, as defined by the Department, and meet the job performance requirements defined in Sections 6.1 through 6.7 of the Standard.

(i) All applicants for certification must complete a Department approved Task Book for NFPA Fire Officer III, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the Department, and meet the job performance requirements in Sections 7.1 through 7.7 of the Standard.

(i) All applicants for certification must complete a Department approved Task Book for NFPA Fire Officer IV, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(l) Hazardous Materials Responder (DPSST-P-12 1/96).

(m) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader must first be certified as an NFPA Fire Fighter II.

(C) An applicant applying for Fire Ground Leader must document training in all of the following areas:

(i) Building Construction: Non-Combustible;

(ii) Building Construction: Combustible;

(iii) Incident Safety Officer or Fire Fighter Safety;

(iv) Managing Water Supplies Operations;

(v) MCTO — Preparation or PICO;

(vi) MCTO — Decision Making;

(vii) MCTO — Tactics or STICO;

(viii) Incident Command System;

(ix) Fire Investigation.

(D) A task book must be completed before certification is awarded.

(n) Wildland Interface Fire Fighter.

(A) This standard includes NWCG Wildland Fire Fighter Type I and Type II.

(B) An individual applying for Wildland Interface Fire Fighter must document training in all of the following areas at the time of application:

(i) S-130 Fire Fighter Training (includes L-180);

(ii) S-190 Wildland Fire Behavior;

(iii) S-131 Firefighter Type I;

(iv) I-100 Introduction to ICS; and

(v) Completion of the NWCG FFT1 Task Book.

(o) Wildland Interface Engine Boss.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Engine Boss must be certified as Wildland Interface Fire Fighter prior to applying for Wildland Interface Engine Boss and must document training in all of the following areas at the time of application:

(i) I-200 Basic Incident Command;

(ii) S-230 or S-231 Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior; and

(iv) Completion of the Task Book for NWCG Single Resource Boss Engine.

(p) Wildland Interface Crew Boss.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Crew Boss must be certified as Wildland Interface Fire Fighter prior to applying for Wildland Interface Crew Boss and must document training in all of the following areas at the time of application:

(i) I-200 Basic Incident Command;

(ii) S-230 Crew Boss (Single Resource);

(iii) S-290 Intermediate Wildland Fire Behavior; and

(iv) Completion of the Task Book for NWCG Single Resource Boss Crew.

(q) Wildland Interface Strike Team Leader Engine.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Strike Team Leader Engine must be certified as Wildland Interface Engine Boss prior to applying for Wildland Interface Strike Team/Leader Engine and must document training in all of the following areas at the time of application:

(i) S-215 Fire Operations in the WUI;

(ii) S-330 Task Force/Strike Team Leader;

(iii) I-300 Intermediate ICS; and

(iv) Completion of the Task Book for NWCG Strike Team Leader Engine.

(r) Wildland Interface Strike Team Leader Crew.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Strike Team Leader Crew must be certified as Wildland Interface Crew Boss prior to applying for Wildland Interface Strike Team Leader Crew and must document training in all of the following areas at the time of application:

(i) S-215 Fire Operations in the WUI;

(ii) S-330 Task Force/Strike Team Leader;

(iii) I-300 Intermediate ICS; and

(iv) Completion of the Task Book for NWCG Strike Team Leader Crew.

(s) Wildland Interface Structural Group Supervisor.

(A) This is an Oregon standard.

(B) An individual applying for Wildland Interface Structural Group Supervisor must be certified as Wildland Interface Strike Team Leader Engine prior to applying for certification as Wildland Structural Interface Group Supervisor and must document training in all of the following areas at the time of application:

(i) S-390 Introduction to Wildland Fire Behavior Calculations;

(ii) S-339 Division/Group Supervisor; and

(iii) Completion of the Task Book for NWCG Group Supervisor.

(t) Wildland Interface Division/Group Supervisor.

(A) This is an NWCG standard.

(B) An individual applying for Wildland Interface Division/Group Supervisor must be certified as Wildland Interface Strike Team Leader Engine and a Wildland Interface Strike Team Leader Crew prior to applying for certification as Wildland Interface Division/Group Supervisor and must document training in all of the following areas at the time of application:

(i) S-390 Introduction to Wildland Fire Behavior Calculations;

(ii) S-339 Division/Group Supervisor; and

ADMINISTRATIVE RULES

(iii) Completion of the Task Book for NWCG Division/Group Supervisor.

(u) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book. Historical Recognition:

(A) The application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(B) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.

(C) All applications received after October 1, 2004, will need to show completion of the approved task book.

(v) Certification guide for Wildland Fire Investigator (August, 2005).

(w) The provisions of the 2008 Edition of NFPA 1006 entitled, "Standards for Technical Rescuer Professional Qualifications" are adopted subject to the following modifications:

(A) The "Authority Having Jurisdiction" means the local or regional fire service agency.

(B) Historical Recognition:

(i) Applicants who currently hold active Department of Public Safety Standards and Training NFPA Surface Water Rescue Technician and NFPA Rope Rescue levels of certification may apply for NFPA Swiftwater Rescue level of certification.

(ii) The NFPA Technical Rescuer application for certification under (i) above must be submitted to the Department of Public Safety Standards and Training on or before December 30, 2011.

(C) Instructors:

(i) Curriculum must be certified by the Department to meet NFPA 1006 standards.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

(D) Task Books:

(i) A task book must be completed for each of the eleven specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can sign off on the task book.

(iii) The requirements in Chapters 4 and 5 need only to be met once for all eleven specialty rescue areas.

(x) Urban Search and Rescue.

(A) This is a standard that is Oregon-specific.

(B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:

(i) Task Force Leader;

(ii) Safety Officer;

(iii) Logistics Manager;

(iv) Rescue Team Manager;

(v) Rescue Squad Officer;

(vi) Rescue Technician;

(vii) Medical Technician;

(viii) Rigging Technician;

(ix) Search Team Manager;

(x) Search Squad Officer;

(xi) Search Technician.

(C) An applicant applying for any USAR certification(s) must complete the appropriate application(s) attesting to completion of the required training.

(y) The provisions of the NFPA Standard 472, 2008 Edition, entitled "Standard for Hazardous Materials and Weapons of Mass Destruction" are adopted subject to the following definitions and modifications hereinafter stated:

(A) Hazardous Materials Technician: All applicants for certification must first certify as an Operations Level Responder and complete a Department approved Task Book, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(B) Hazardous Materials Safety Officer: All applicants for certification must first certify as a Hazardous Materials Technician and complete a Department approved Task Book, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification. This certification level includes, but is not limited to, the following course work:

(i) Analyzing the Incident;

(ii) Planning the Response;

(iii) Implementing the Planned Response;

(iv) Evaluating the Progress.

(C) Incident Commander: The level of certification formerly known as "On-Scene Incident Commander" is now known as "Incident Commander." The Incident Commander correlates directly with NFPA 472. All applicants for certification must first certify as an Operations Level Responder.

(D) Operations Level Responder: The level of certification formerly known as "First Responder" is now known as "Operations Level Responder." The Operations Level Responder correlates directly with NFPA 472. Successful completion of skills sheets or task performance evaluations (TPE) must be met prior to certification as an Operations Level Responder.

(z) Specialty Levels of Certification. All applicants for specialty levels of certification must first certify as a Hazardous Materials Technician.

(A) The following four (4) specialty certifications are adopted:

(i) Cargo Tank Specialty;

(ii) Intermodal Tank Specialty;

(iii) Marine Tank Vessel Specialty;

(iv) Tank Car Specialty;

(B) Successful completion of task performance evaluations (TPE) must be met prior to obtaining a specialty level of certification.

(3) Task performance evaluations, where prescribed, shall be required prior to certification. Such examinations shall be conducted in the following manner:

(a) Task performance competency shall be evaluated by three people nominated by the employing fire service agency's Chief Officer for approval by the Department or its designated representative.

(b) The employing fire service agency's equipment and operational procedures shall be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, shall be used for administration of the evaluation.

(d) The training officer for an accredited fire service agency training program must notify the Department or its designated representative prior to performing a Task Performance Evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire service agency whose training program is not accredited.

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003 f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006 f. & cert. ef. 7-7-06; DPSST 14-2006, f. & cert. ef. 10-13-06; DPSST 16-2006, f. & cert. ef. 11-20-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09; DPSST 16-2009(Temp), f. & cert. ef. 12-15-09 thru 6-11-10; DPSST 5-2010, f. 6-11-10, cert. ef. 6-14-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 3-2011, f. 3-28-11, cert. ef. 5-1-11

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Department of Revenue

Chapter 150

Rule Caption: Defining tangible personal property and Oregon electricity or natural gas sales for corporation tax apportionment.

Adm. Order No.: REV 1-2011

Filed with Sec. of State: 3-21-2011

Certified to be Effective: 3-21-11

Notice Publication Date: 1-1-2011

Rules Adopted: 150-314.665(2)-(C)

Rules Amended: 150-314.665(2)-(A)

Rules Repealed: 150-314.665(2)-(C)(Temp), 150-314.665(2)-(A)(Temp)

Subject: In 2007, the department adopted amendments to 150-314.665(2)-(A) and adopted a new rule, 150-314.665(2)-(C). In 2010, the Court of Appeals invalidated an administrative rule adopted by the department because of an inadequate statement of fiscal impact. Following that decision, the department determined that the fiscal impact statement filed with the 2007 rule changes may also have failed to meet statutory requirements. The department has promulgated both 150-314.665(2)-(A) and 150-314.665(2)-(C).

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

ADMINISTRATIVE RULES

150-314.665(2)-(A)

Sales Factor; Sales of Tangible Personal Property in this State

The rule adopts provisions of a model regulation recommended by the Multistate Tax Commission to promote uniform treatment of this item by the states.

(1) For purposes of ORS 314.665 and the rules thereunder, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

(2) For purposes of apportioning income under ORS 314.665 and this rule, gross receipts from the sales of tangible personal property (except sales to the United States Government; see OAR 150-314.665(2)-(B)) are in this state:

(a) If the property is delivered or shipped to a purchaser within this state (Oregon) regardless of the f.o.b. point or other conditions of sale; whether transported by seller, purchaser, or common carrier; or

(b) If the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

Example 1: A seller with a place of business in State A is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including Oregon, makes arrangements to hire a common carrier to pick up merchandise, f.o.b. plant, at the seller's place of business and have it delivered to the purchaser's outlet in Oregon. The seller, who is subject to Oregon excise tax, must treat this as a sale of property delivered or shipped to a purchaser in Oregon.

Example 2: A seller with a place of business in Oregon is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including State A, sends its own truck to pick up the merchandise at the seller's place of business and have it transported to the purchaser's outlet in State A. The seller is taxable in State A. The seller must treat this as a sale of property delivered or shipped to a purchaser in State A.

(c) Notwithstanding subsection (2)(b) of this rule, for tax years beginning on or after January 1, 2006, the sale of goods from a public warehouse is not considered to take place in Oregon if:

(A) The taxpayer's only activity in Oregon is the storage of the goods in a public warehouse prior to shipment; or

(B) The taxpayer's only activities in Oregon are the storage of the goods in the public warehouse prior to shipment and the presence of employees within this state solely for purposes of soliciting sales of the taxpayer's products.

(3) Property is deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example 3: The taxpayer, with inventory in State A, sold \$100,000 of its products to a purchaser having branch stores in several states including Oregon. The order for the purchase was placed by the purchaser's central purchasing department located in State B. \$25,000 of the purchase order was shipped directly to purchaser's branch store in Oregon. The branch store in this state is the "purchaser within this state" with respect to \$25,000 of the taxpayer's sales.

(4) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example 4: The taxpayer makes a sale to a purchaser who maintains a central warehouse in Oregon at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of taxpayer's products shipped to the purchaser's warehouse in Oregon is property "delivered or shipped to a purchaser within this state."

(5) The term "purchaser within this state" includes the ultimate recipient of the property if the taxpayer in Oregon, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within Oregon.

Example 5: A taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Oregon pursuant to purchaser's instructions. The sale by the taxpayer is in Oregon.

(6) When property being shipped by a seller from the state of origin to a purchaser in another state is diverted while enroute to a purchaser in Oregon, the sales are in Oregon.

Example 6: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While enroute the produce is diverted to the purchaser's place of business in Oregon, in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to Oregon.

(7) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to Oregon if the property is shipped from an office, store, warehouse, factory, or other place of storage in Oregon.

(a) Sales to a purchaser in a state other than Oregon will not be attributed to Oregon if the other state imposes a net income tax on the seller.

(b) Sales to a purchaser in a state other than Oregon will not be attributed to Oregon if the other state would have jurisdiction to tax the seller on net income under the constitution of the United States and federal Public Law (P.L.) 86-272.

(c) OAR 150-314.620-(C) provides that sales and activities in a foreign country will be treated the same as those in another U.S. state for determining if the foreign country has jurisdiction to tax the seller on net income.

(d) The guidelines provided by federal P.L. 86-272 apply equally to activities regarding sales to unrelated parties and sales to affiliated corporations.

(e) The immunity provided by P.L. 86-272 is not lost when a business engages in de minimis activities unrelated to the solicitation of orders in a state or foreign country where its only other activities are those protected by P.L. 86-272. Examples of such immune activities include the following:

(A) The board of directors of a corporation based in Oregon holds a meeting at a hotel in another state or in a foreign country,

(B) The president of a parent corporation based in Oregon meets with the managers of a subsidiary in a foreign country to discuss the subsidiary's five-year plan and capital acquisitions budget.

(C) The controller of a parent corporation based in Oregon meets with the accounting staff of a subsidiary in a foreign country to discuss federal financial reporting requirements.

Example 7: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in Oregon. Taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Oregon for approval and are filled by shipment from the inventory in Oregon. Since taxpayer is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to Oregon, the state from which the merchandise was shipped.

Example 8: A parent company sells its product to a subsidiary, organized in a foreign country, that uses the parent's product in manufacturing its product. Because of the parent-subsidiary relationship, orders are not solicited in the same way as sales to unrelated customers. Instead, the products are shipped as needed to the subsidiary. Officials from the parent company maintain a close liaison with the foreign subsidiary on the planning and design of the items sold. After the parties agreed on a contract in which the parent would manufacture and sell certain items to the subsidiary, the close working relationship continued between the technicians of both companies. Many of the parent's employees made regular trips to the subsidiary after the contract was signed, to take care of such items as manufacturing problems, installation problems, repair work, redesign discussions, and/or production problems. Parent's production engineers, production workers, metallurgists, quality control managers, and assembly supervisors were some of the personnel who spent several weeks of the year working closely with the foreign subsidiary. The foreign country does not impose an income tax on the parent corporation. Based upon the above facts, the parent is not considered to be protected under P.L. 86-272 and therefore is not required to attribute sales to Oregon.

Example 9: A subsidiary organized in a foreign country purchases products from its parent, a manufacturing company in Oregon. The subsidiary places a purchase order with the parent on an "as needed" basis. The parent, upon receipt of the purchase order, makes shipment to the subsidiary. The subsidiary, upon receipt of the product, makes payment to the parent. The parent has a relationship with its foreign subsidiary that is unrelated to the sale of its product. Officials from the parent company occasionally visit the foreign subsidiary to discuss matters unrelated to the sale of its product, including: (1) public relations, (2) personnel matters, and (3) government relations. The foreign country does not impose an income tax on the parent corporation. Based upon the above facts, the parent is considered to be protected under P.L. 86-272 and is required to attribute the sales to Oregon.

(8) If a taxpayer whose salesman operates from an office located in Oregon makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply, under authority of ORS 314.670:

(a) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in such state.

(b) If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in Oregon.

Example 10: The taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in Oregon.

Publications: Publications referenced are available from the Agency

Stat. Auth.: ORS 305.100 & 314.670

Stats. Implemented: ORS 314.665

Hist.: 12-70; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 11-2004, f. 12-29-04, cert. ef. 12-31-04; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 5-2007, f. 7-30-07, cert. ef. 7-31-07; REV 14-2010(Temp), f. & cert. ef. 12-1-10 thru 5-27-11; REV 1-2011, f. & cert. ef. 3-21-11

150-314.665(2)-(C)

Sales Factor; Sale of Electricity or Natural Gas

(1) A sale of tangible personal property, including but not limited to the sale of a commodity like electricity or natural gas, which is delivered or shipped to a purchaser with a contracted point of delivery in Oregon is a sale in this state. This is regardless of whether the purchaser uses the property in Oregon, transfers the property to another state, or resells the property in Oregon. If the contract states the point of delivery is at the border with another state, the sale is presumed to be in Oregon unless the taxpayer can demonstrate to the satisfaction of the department that delivery occurred in some other place.

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Example 1: A provider of wholesale electricity enters into a contract to deliver a specified amount and duration of a supply of electricity to a purchaser who takes possession at a specified point of delivery in Oregon. The sale is an Oregon sale.

(2) A taxpayer who contracts to sell electricity to and also buy electricity from the same entity during the same period or partial period of time will have an offsetting contractual amount, also known as a book-out transaction. The gross sales of electricity, without regard to the offsetting purchase amount, are considered to be Oregon sales if the contracted point of delivery is in Oregon.

Example 2: Company A signed a contract on January 2, 2006, to purchase 50 megawatts of electricity for a period of 10 hours starting November 15, 2006, from Company B with a delivery point of Malin, Oregon. For this same time period, Company A signed a contract on March 15, 2004, to sell 30 megawatts of electricity to Company B with a point of delivery at Malin, Oregon. The 30 megawatts of power is recorded as a book-out transaction on both companies' books for reporting to Oregon. The offsetting transaction for the 30 megawatts is deemed to be delivered in Oregon for the purposes of computing the Oregon sales factor. Company A will report the sale of 30 megawatts in its Oregon sales factor numerator and Company B will report the sale of 50 megawatts (20 megawatts to complete the sales contract plus 30 megawatts from the book-out transaction) of electricity in its Oregon sales factor numerator.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.665

Hist.: REV 5-2007, f. 7-30-07, cert. ef. 7-31-07; Suspended by REV 15-2010(Temp), f. & cert. ef. 12-1-10 thru 5-27-11; REV 1-2011, f. & cert. ef. 3-21-11

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

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

Adm. Order No.: DMV 3-2011

Filed with Sec. of State: 3-16-2011

Certified to be Effective: 3-16-11

Notice Publication Date: 2-1-2011

Rules Amended: 735-034-0000, 735-034-0005, 735-034-0010, 735-154-0005

Subject: 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. These amendments add definitions and clarify requirements for trip permit agreements.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-034-0000

Definitions of Trip Permit Agents

As used in OAR 735-034-0000 to 735-034-0010 and any agreement entered into under OAR 735-034-0005:

(1) A "trip permit agent" or "agent" is a person authorized by Oregon law, administrative rule or designated by the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) to issue trip permits on behalf of DMV.

(2) "Arrangements," as used in ORS 803.600(5), means the process for designating trip permit agents pursuant to OAR 735-034-0005.

(3) A "General Trip Permit Agent" is an agent authorized to issue light vehicle trip permits, recreational vehicle trip permits, registration weight trip permits, registered vehicle trip permits, and heavy motor vehicle and heavy trailer trip permits.

(4) A "Heavy Vehicle Trip Permit Agent" is an agent authorized to issue heavy vehicle trip permits for their own vehicles or vehicles under their control.

(5) A "Restricted Trip Permit Agent" is an out-of-state dealer authorized as an agent to issue light vehicle trip permits to customers whose vehicles will be titled and registered in Oregon.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.

Stat. Auth.: ORS 184.616, 184.619, 803.600 - 803.650 & 806.080

Stats. Implemented: ORS 803.600, 803.602, 803.605, 803.640

Hist.: MV 19-1986, f. & ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-110-0050; MV 13-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 9-1998, f. & cert. ef. 8-20-98; DMV 14-2001, f. & cert. ef. 8-13-01; DMV 3-2011, f. & cert. ef. 3-16-11

735-034-0005

Requirements for Designation as a Trip Permit Agent

(1) DMV may designate a person or business as a vehicle trip permit agent to issue vehicle trip permits to the public on behalf of DMV.

(2) A person wishing to be designated as a vehicle trip permit agent must enter into a vehicle trip permit agent agreement with DMV.

(3) A designated trip permit agent, vehicle dealer, towing business, or other person authorized by Oregon law to issue trip permits is subject to all Oregon statutes and DMV rules relevant to the issuance and sale of trip permits.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.600, 803.645, 806.080

Stats. Implemented: ORS 803.600, 803.602, 803.605, 803.640

Hist.: DMV 14-2001, f. & cert. ef. 8-13-01; DMV 3-2011, f. & cert. ef. 3-16-11

735-034-0010

Procedures for Issuance of Trip Permits

(1) This rule describes the procedures and requirements for vehicle trip permits issued under the authority of ORS 803.600. Vehicle trip permits may be issued by:

(a) A trip permit agent pursuant to ORS 803.600 and OAR 735-034-0005;

(b) A vehicle dealer pursuant to ORS 802.031 and OAR 735-150-0040, including a vehicle dealer who issues 10-day trip permits as described under ORS 803.600; or

(c) A towing business that issues 10-day trip permits as described under ORS 803.600.

(2) A person described under section (1) of this rule must comply with the following requirements for the issuance of trip permits:

(a) Unless otherwise authorized in writing by DMV, trip permits must be purchased from DMV prior to issuance.

(b) Each trip permit issued must be legibly completed with the following information:

(A) The name and address of the vehicle's registered owner or the person applying for the trip permit. The name and address is recorded on the issuer's copy and DMV's copy of the permit;

(B) The driver license number of the vehicle's registered owner or the person applying for the trip permit, if available. Nothing may be written on the purchaser's (window) copy of the permit to identify the person to whom the permit was issued;

(C) A complete vehicle description, including the year, make, body style and vehicle identification number (VIN);

(D) The written signature of the person who issues the permit. This must include at least the person's full first and last name;

(E) The identification number of the trip permit agent, if one has been assigned by DMV, or the certificate number of the dealer or towing business;

(F) The effective date and expiration date of the permit;

(G) For a registration weight trip permit, the registration weight of the vehicle.

(c) For a light vehicle trip permit, the person who issues the permit must require the applicant to sign a certification stating:

(A) The insurance company name and policy number; and

(B) The motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080, and that the vehicle will continue to be covered as long as the permit is valid.

(d) A vehicle dealer or towing business that issues a 10-day trip permit:

(A) Must ensure all Oregon registration stickers have been removed in accordance with 803.565;

(B) May not issue more than two permits for the same motor vehicle; and

(C) Must require the person applying for the permit to provide the insurance company name and policy number on the permit, and sign the certification on the permit stating that the motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid.

(e) For a recreational vehicle trip permit, the person who issues the permit must require the applicant to:

(A) Provide proof of ownership as described in OAR 735-034-0050;

(B) Sign a certification stating that the applicant has not been issued recreational vehicle trip permits that, when included with the permit being applied for, would grant more than 10 days vehicle operation for the preceding 12 months;

(C) Provide the insurance company name and policy number if the trip permit is for a motor home; and

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(D) Sign the certificate on the permit, stating that the recreational vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid if the trip permit is for a motor home.

(f) A person authorized to issue a trip permit under section (1) of this rule:

(A) Must send DMV's copy of the permit to DMV within seven (7) days of the date a permit is issued; and

(B) May not loan, transfer or assign a trip permit to any other person.

(3) Any alteration of the permit information will automatically void the permit:

(a) When a trip permit is voided, the trip permit agent, vehicle dealer, or towing business must return the vehicle (purchaser's) copy and DMV's copy to DMV within seven (7) days of the date it was voided, along with an explanation of why the permit was voided. If either copy of the voided permit is unavailable for submission to DMV, the explanation must state the reason; and

(b) If DMV is satisfied that a prepaid permit was not altered or used for the operation of a vehicle, DMV will refund the prepaid permit fee to the trip permit agent, vehicle dealer or towing business that purchased the permits from DMV.

(4) Upon receipt of a written request from a trip permit agent, vehicle dealer or towing business subject to this rule, DMV will refund the fee amount for each unissued prepaid permit.

(5) Upon DMV's written request, a trip permit agent, vehicle dealer or towing business subject to this rule must immediately cease issuing permits and immediately return all unused trip permits to DMV. DMV will issue a refund to the trip permit agent, vehicle dealer or towing business for any unused prepaid permits returned to DMV.

(6) DMV may revoke the authority of a trip permit agent, vehicle dealer or towing business to issue trip permits:

(a) For failure to comply with any provision of this rule;

(b) If DMV determines the issuance of permits is not in the interest of the public; or

(c) A change in state or federal law or regulation prohibits the issuance of trip permits as described under this rule or OAR Chapter 735, Division 034.

(7) The failure of a trip permit agent, vehicle dealer or towing business to comply with the provisions of this rule may result in the revocation of the authority to issue trip permits.

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

Stats. Implemented: ORS 803.565, 803.600, 803.602, 803.645, 806.080

Hist.: MV 19-1986, f. & cert. ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-110-0060; MV 2-1989, f. & cert. ef. 1-3-89; MV 13-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 9-1998, f. & cert. ef. 8-20-98; DMV 14-2001, f. & cert. ef. 8-13-01; DMV 28-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 8-2002, f. & cert. ef. 4-12-02; DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 9-2004, f. & cert. ef. 5-24-04; DMV 7-2005, f. & cert. ef. 2-16-05; DMV 3-2011, f. & cert. ef. 3-16-11

735-154-0005

Authority of Towing Business to Issue 10-day Trip Permits

(1) A towing business may issue 10-day trip permits as provided in ORS 803.600, if the towing business:

(a) Submits a completed and signed agreement to issue trip permits to DMV; and

(b) Agrees to abide by the Oregon statutes and administrative rules relating to the issuance and sale of 10-day trip permits, including but not limited to ORS 803.600 and OAR 735-034-0010.

(2) DMV may revoke the authority of a towing business to issue 10-day trip permits if the towing business fails to comply with the requirements of ORS 803.565 and OAR 735-034-0010.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.600, 822.205, 822.215

Stats. Implemented: ORS 803.600, 822.215

Hist.: DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 9-2004, f. & cert. ef. 5-24-04; DMV 3-2011, f. & cert. ef. 3-16-11

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

Adm. Order No.: DMV 4-2011

Filed with Sec. of State: 3-16-2011

Certified to be Effective: 3-16-11

Notice Publication Date: 2-1-2011

Rules Adopted: 735-080-0046

Rules Amended: 735-080-0020, 735-080-0040

Subject: These administrative rules describe when DMV will issue various types of disabled person parking permits and when DMV will replace or renew a disabled person parking permit. DMV revised

the application form for an individual, wheelchair or temporary disabled person parking permit to make the process more efficient and less confusing for applicants so some references to specific application forms were removed from the rules. DMV clarified the requirements for obtaining a foreign visitor permit and formatted 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 adopted 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, making it easier to find the correct information.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-080-0020

Issuance of Disabled Person Parking Permits

(1) Individual - The Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV) will issue an individual disabled person parking permit or decal, or both, as described in ORS 811.605 to an applicant whose completed application (DMV form 735-265) includes:

(a) The applicant's name and address;

(b) The applicant's driver license number, disability golf cart driver permit number or identification card number; and

(c) A certificate, as required by ORS 811.604, that the applicant is a person with a disability.

(2) Wheelchair User — DMV will issue a wheelchair user disabled person parking permit or decal, as described in ORS 811.613, to an applicant whose completed application (DMV form 735-265) includes:

(a) The applicant's name and address;

(b) The applicant's driver license number, disability golf cart driver permit number or identification card number;

(c) A certificate, as described in ORS 811.604, showing that the applicant is a person with a disability and the person has a condition that requires the use of a wheelchair or similar low-powered motorized or mechanically propelled vehicle designed specifically for use by a person with a physical disability; and

(d) The applicant certifies that he or she uses a wheelchair or similar vehicle and requires a van accessible parking space.

(3) Temporary Disability — DMV will issue a temporary disabled person parking permit, valid for a maximum of six months, to a person whose completed application (DMV form 735-265) includes:

(a) The applicant's name and address;

(b) The applicant's driver license number, disability golf cart driver permit number, identification card number, or customer number, if one has been assigned by DMV; and

(c) A certificate, as required by ORS 811.604, except that it certifies that the applicant is temporarily disabled for less than four years. If the certificate specifies an ending date of the disability that is less than six months, that date will be used as the expiration date of the permit.

(4) Foreign Visitor — DMV will issue a foreign visitor permit valid for 30 days to a person who meets the requirements of ORS 811.611. If the person does not have a disabled person permit or certificate issued by the country that issued the person's passport or visa, the person must provide a certificate meeting the requirements of ORS 811.604(1).

(5) Program — DMV will issue a program disabled person parking permit, as described under ORS 811.607, to a program that regularly operates at least one vehicle for the transportation of persons with disabilities, including, but not limited to a nonprofit organization, an agency, a residential care facility, an assisted living facility, a medical or persons with disabilities transportation service, or an adult foster care home. The program's completed application (DMV form 735-265 PP) must include:

(a) The program's name and address;

(b) The name of the program's contact person;

(c) A certification that the program is an organization, agency or business that regularly transports persons with disabilities; and

(d) The number of vehicles in the program that regularly transports persons with disabilities.

(6) Family — DMV will issue a family disabled person parking permit to a family that has more than one person with disabilities residing in the same household. The applicant must be an adult family member and the applicant's completed application (DMV form 735-265 FPP) must include:

(a) The name and address of the applicant;

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(b) A certificate, as required by ORS 811.609, that the family includes at least two persons with a disability, including the name of each family member with a disability; and

(c) The number of vehicles regularly used by the family to transport those family members with a disability.

Stat. Auth.: ORS 801.235, 802.010, 811.602, 811.607 & 811.609
Stats. Implemented: ORS 811.602 & 811.604, 811.605, 811.606, 811.607 & 811.609
Hist.: MV 11-1985, f. 9-19-85, ef. 9-20-85; MV 30-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-08810; MV 38-1989, f. & cert. ef. 10-3-89; MV 20-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 20-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 29-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 4-2011, f. & cert. ef. 3-16-11

735-080-0040

Replacement of Disabled Person Parking Permits

(1) DMV may replace a disabled person parking permit, including an individual permit, a wheelchair user permit, a temporary permit, a temporary duplicate permit, and a permit with a parking identification card as described in OAR 735-080-0060. To replace a permit or decal, the holder may apply for replacement in person at a DMV field office or by mail to the DMV Driver Issuance Unit — Parking Permits Clerk at 1905 Lana Ave NE, Salem, OR, 97314. All replacements for program and family permits are required to apply by mail to the DMV Driver Issuance Unit — Parking Permits Clerk at 1905 Lana Ave NE, Salem, OR, 97314. The holder must submit an Application for a Person with a Disability Parking Permit (DMV form 735-265) as described in OAR 735-080-0020 or 735-080-0060 that includes:

(a) The name, address and Oregon driver license or permit number (ODL), identification card number (ID) or customer number;

(b) A certification that the original disabled person parking permit is lost or destroyed; and

(c) A certification that the applicant continues to qualify for the permit.

(2) If a required certificate as described in ORS 811.604 or 811.609 is not on file with DMV, DMV will not replace a lost or stolen disabled person parking permit. The person must apply for an original disabled person permit as set forth in OAR 735-080-0020.

Stat. Auth.: ORS 184.616, 184.619, 811.602, 811.607 & 811.609
Stats. Implemented: ORS 811.602, 811.604, 811.605, 811.606, 811.607 & 811.609
Hist.: MV 11-1985, f. 9-19-85, ef. 9-20-85; MV 30-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-0830; MV 38-1989, f. & cert. ef. 10-3-89; MV 20-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 6-1996, f. & cert. ef. 8-15-96; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 18-2001(Temp), f. & cert. ef. 9-21-01 thru 3-19-01; DMV 6-2002, f. & cert. ef. 3-14-02; DMV 20-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 29-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 4-2011, f. & cert. ef. 3-16-11

735-080-0046

Expiration and Renewal of Disabled Person Parking Permits

(1) An individual or wheelchair user permit or decal expires on the expiration date of the person's driver license, disability golf cart permit, identification card or parking identification card. The permit or decal must be renewed within one year from the date of expiration of the permit. To renew a permit or decal, the holder must appear in person at a DMV field office if also renewing a driver license, disability golf cart permit or identification card. Otherwise, the holder may renew by mail by submitting:

(a) The Parking Placard and Driver license or ID card Renewal Reminder (DMV form 735-7353) that includes a Certificate of Disability completed by the holder's physician; or

(b) An Application for a Person with a Disability Parking Permit, on DMV form 735-265 as described in OAR 735-080-0020, that includes a Certificate of Disability completed by the holder's physician, certified nurse practitioner or physician assistant.

(2) To renew a disabled person parking permit with a parking identification card as described in OAR 735-080-0060 the holder must submit by mail, to the DMV Driver Issuance Unit — Parking Permits Clerk at 1905 Lana Ave NE, Salem, OR, 97314, a completed Non-Photo Parking ID Card and Disabled Person's Parking Permit Application (DMV form 735-265) that includes a Certificate of Disability completed by the holder's physician, certified nurse practitioner or physician assistant.

(3) A program permit expires eight years from the date of issuance. DMV will renew and issue new permit(s) if the program continues to qualify and completes DMV form 735-265PP. The form must be mailed to DMV, Driver Issuance Unit, 1905 Lana Avenue NE, Salem, Oregon 97314. The permit must be renewed within one year from the date of expiration of the permit.

(4) A family permit expires eight years from the date of issuance. DMV will renew and issue new permit(s) if a family continues to qualify and completes DMV form 735-265FPP. The form must be mailed to DMV, Driver Issuance Unit, 1905 Lana Avenue NE, Salem, Oregon 97314. The

permit must be renewed within one year from the date of expiration of the permit.

(5) A temporary disabled person parking permit expires six months from the date of issuance. The permit may not be renewed, but the person may re-apply for a temporary disabled person parking permit by complying with OAR 735-080-0020(3) if the person's temporary disability continues beyond a six-month period.

(6) A temporary duplicate permit expires 30 days after issuance. A person may not renew a temporary duplicate permit.

(7) A disabled person parking permit automatically expires and becomes invalid when the individual, wheelchair user, program or family no longer meets the qualifying conditions. The permit must be returned immediately to DMV. A disabled person parking permit may not be transferred to any other person.

Stat. Auth.: ORS 184.616, 184.619, 811.602, 811.607 & 811.609
Stats. Implemented: ORS 811.602, 811.604, 811.605, 811.606, 811.607 & 811.609
Hist.: DMV 4-2011, f. & cert. ef. 3-16-11

Department of Veterans' Affairs Chapter 274

Rule Caption: Veterans Service Officer Certification Program.

Adm. Order No.: DVA 1-2011

Filed with Sec. of State: 3-24-2011

Certified to be Effective: 3-24-11

Notice Publication Date: 3-1-2011

Rules Adopted: 274-031-0001, 274-031-0002, 274-031-0003, 274-031-0004, 274-031-0005, 274-031-0006, 274-031-0007, 274-031-0008, 274-031-0009

Subject: OAR 274 division 031 is established to administer and enforce ORS 406.452 and ORS 408.095, which authorize the Department of Veterans' Affairs ("ODVA") to establish and administer a Veteran Service Officer ("VSO") Certification Program (the "Program"). The essential objectives of the Program include assuring that each certified VSO receives appropriate initial and ongoing training, education, and experience sufficient to achieve and maintain competency in applying for applicable federal and state benefits on behalf of Oregon veterans.

Rules Coordinator: Bruce Craig—(503) 373-2327

274-031-0001

Purpose and Objectives

OAR 274 division 31 is established to administer and enforce ORS 406.452 and ORS 408.095, which authorize the Department of Veterans' Affairs ("ODVA") to establish and administer a Veteran Service Officer ("VSO") Certification Program (the "Program"). The essential objectives of the Program include assuring that each certified VSO receives appropriate initial and ongoing training, education, and experience sufficient to achieve and maintain competency in applying for applicable federal and state benefits on behalf of Oregon veterans, spouses and dependents of veterans or survivors of veterans.

Stat. Auth.: ORS 406.452 & 408.095
Stats. Implemented: ORS 406.050, 406.452 & 408.095
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0002

Definitions

For the purposes of OAR chapter 274 division 031, the following terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Certified" means that ODVA has provided specific written recognition that a particular person, employed by the state or county to counsel and apply for applicable state and federal veterans' benefits on behalf of Oregon veterans, spouses and dependents of veterans or survivors of veterans, has received requisite training, and otherwise satisfied minimum standards of education and experience, consistent with ORS 406.452 and the Program to serve in that role as a VSO.

(2) "Director" means the Director of Veterans' Affairs for the State of Oregon as defined in ORS 406.010.

(3) "ODVA" means the State of Oregon, acting by and through its Department of Veterans' Affairs.

(4) "Veteran Service Officer" or "VSO" means a state or county employee who is designated to apply for applicable state and federal veterans' benefits on behalf of Oregon veterans and certified by ODVA to so act consistent with this division.

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(5) "Reestablished VSO" means a VSO who has not been employed as a VSO in the last three years.

(6) "Milestone Examination" means an examination administered by ODVA near the midpoint of the Training Program. This examination is designed to benchmark the progress, and future training needs, of the VSO related to defined training objectives as defined in OAR 274-031-0003.

Stat. Auth.: ORS 406.452
Stats. Implemented: ORS 406.050 & 406.452
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0003

Minimum Training Standards for Certification

(1) As it deems appropriate, ODVA will make available or recognize training for VSO certification typically including, but not necessarily limited to the following:

(a) A multiple-day training course developed and provided on-site at ODVA's Salem headquarters facility located at 700 Summer Street NE, Salem, Oregon;

(b) An introductory training course for new or reestablishing VSO applicants;

(c) Topical training as part of its VSO conference(s); and

(d) Additional training approved by ODVA offered through official sanctioned veterans' organizations.

(2) To receive VSO certification, persons must, as determined by ODVA, satisfactorily complete required training within the first 18 months of appointment, except as provided in section (5) of this rule.

(3) The training will be conducted under the supervision of ODVA's Training Coordinator or designee.

(4) Upon satisfactory completion of the training and a passing grade on the certification testing, as determined by ODVA, the VSO will qualify to become certified as determined by ODVA.

(5) VSO certification will terminate if the VSO has not been employed as a VSO in the last three years. The VSO must then satisfactorily complete the training program to qualify for certification. ODVA shall waive this requirement if the VSO:

(a) Successfully completes a written test; or

(b) Submits documentation of successful completion of equivalent training as determined by ODVA.

(6) ODVA may grant an extension of the time limit for the completion of the Training Program upon presentation of evidence by the employing agency that the VSO was unable to complete the required training due to illness, injury, military service, or other prudent reason(s).

Stat. Auth.: ORS 406.452
Stats. Implemented: ORS 406.050 & 406.452
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0004

Certification Testing

ODVA shall require that all new VSOs and VSOs being reestablished must take the following examinations within a timeframe as determined by the Director or the Director's designee per OAR 274-031-0003:

(1) Milestone examination; and

(2) Certification examination.

Stat. Auth.: ORS 406.452
Stats. Implemented: ORS 406.050 & 406.452
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0005

Minimum Certification Standards

(1) Each certification test will require a passing grade as determined by ODVA. If a passing grade is not achieved, the test will be readministered approximately 90 days thereafter.

(2) Newly appointed and reestablished VSOs must complete the minimum training standards for certification within the first 18 months of appointment.

(3) The Director, or designee, will assign a specific value to each training as outlined in 274-031-0003.

Stat. Auth.: ORS 406.452
Stats. Implemented: ORS 406.050 & 406.452
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0006

Maintaining Certification

Each VSO must maintain certification by:

(1) Participating in six training units every year;

(2) Taking and passing the certification test once every two years; and

(3) Maintaining quality work performance as determined by the

Director or designee.

Stat. Auth.: ORS 406.452

Stats. Implemented: ORS 406.050 & 406.452
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0007

Denial/Revocation of Certification

The Director, or the Director's designee, may deny or cancel a VSO's certification if the Director, or the Director's designee, determines that the VSO is not maintaining, but not limited to, the following:

(1) The minimum certification standards as outlined in 274-031-0005;

(2) Satisfactory completion and maintenance of training and education as set by ORS 406.452;

(3) Compliance with state or federal laws;

(4) Continued employment as a VSO;

(5) Lack of sanctions by the federal Veterans Administration;

(6) Quality of claims work.

Stat. Auth.: ORS 406.452
Stats. Implemented: ORS 406.050 & 406.452
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0008

Hearings Request

Any person adversely affected by an ODVA determination with respect to this Program, may request review of such determination by the Director. The Director, or the Director's designee, will undertake such review as he or she deems appropriate. The Director, or the Director's designee will endeavor to provide a written response within 30 days of receipt of the requested review.

Stat. Auth.: ORS 406.030 & 406.452
Stats. Implemented: ORS 406.030 & 406.452
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

274-031-0009

Waiver of Rules

ODVA may waive or modify any requirements of OAR 274, division 31, in order to achieve substantial justice and the purposes of the Program unless such waiver or modification would violate applicable federal or state law.

Stat. Auth.: ORS 406.030 & 406.005
Stats. Implemented: ORS 406.030, 406.050 & 406.452
Hist.: DVA 1-2011, f. & cert. ef. 3-24-11

Land Conservation and Development Department Chapter 660

Rule Caption: Minor and technical amendments to conform to law, clarify wording and correct references.

Adm. Order No.: LCDD 3-2011

Filed with Sec. of State: 3-16-2011

Certified to be Effective: 3-16-11

Notice Publication Date: 11-1-2010

Rules Amended: 660-004-0000, 660-004-0005, 660-004-0010, 660-004-0015, 660-004-0018, 660-004-0020, 660-004-0022, 660-004-0025, 660-004-0028, 660-004-0030, 660-004-0035, 660-004-0040

Subject: Rules were modified to make minor and technical amendments to: conform to statutes, laws and rules; respond to Land Use Board of Appeals and other court opinions; clarify ambiguous and unclear wording consistent with the intent of the rule; update and correct references to rules, statutes or other documents and correct grammar.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-004-0000

Purpose

(1) The purpose of this division is to interpret the requirements of Goal 2 and ORS 197.732 regarding exceptions. This division explains the three types of exceptions set forth in Goal 2 "Land Use Planning, Part II, Exceptions." Rules in other divisions of OAR 660 provide substantive standards for some specific types of goal exceptions. Where this is the case, the specific substantive standards in the other divisions control over the more general standards of this division. However, the definitions, notice, and planning and zoning requirements of this division apply to all types of exceptions. The types of exceptions that are subject to specific standards in other divisions are:

(a) Standards for a demonstration of reasons for sanitary sewer service to rural lands are provided in OAR 660-011-0060(9);

(b) Standards for a demonstration of reasons for urban transportation improvements on rural land are provided in OAR 660-012-0070;

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(c) Standards to determine irrevocably committed exceptions pertaining to urban development on rural land are provided in OAR 660-014-0030, and standards for demonstration of reasons for urban development on rural land are provided in OAR 660-014-0040.

(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons that explains why the proposed use not allowed by the applicable goal, or a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use, should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.

(3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to:

(a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and

(b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide goal.

(4) When taking an exception, a local government may rely on information and documentation prepared by other groups or agencies for the purpose of the exception or for other purposes, as substantial evidence to support its findings of fact. Such information must be either included or properly incorporated by reference into the record of the local exceptions proceeding. Information included by reference must be made available to interested persons for their review prior to the last evidentiary hearing on the exception.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040, 197.712, 197.717, 197.732, & 197.736

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0005

Definitions

For the purpose of this division, the definitions in ORS 197.015 and the Statewide Planning Goals shall apply. In addition, the following definitions shall apply:

(1) An "Exception" is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with ORS 197.732(2), the provisions of this division and, if applicable, the provisions of OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040.

(2) "Resource Land" is land subject to one or more of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d).

(3) "Nonresource Land" is land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land.

Stat. Auth.: ORS 197.040

Stats. Implemented ORS 197.015, 197.732, & 197.736

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0010

Application of the Goal 2 Exception Process to Certain Goals

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands", except as provided under OAR 660-004-0022 regarding a use authorized by a statewide plan-

ning goal that cannot comply with the approval standards for that type of use;

(b) Goal 4 "Forest Lands"; however, an exception to Goal 4 "Forest Lands" is not required for any of the forest or nonforest uses allowed in a forest or mixed farm/forest zone under OAR chapter 660, division 6, "Forest Lands";

(c) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060(9);

(d) Goal 14 "Urbanization" as provided for in the applicable paragraph (l)(c)(A), (B), (C) or (D) of this rule:

(A) An exception is not required for the establishment of an urban growth boundary around or including portions of an incorporated city;

(B) When a local government changes an established urban growth boundary applying Goal 14 as it existed prior to the amendments adopted April 28, 2005, it shall follow the procedures and requirements set forth in Goal 2 "Land Use Planning," Part II, Exceptions. An established urban growth boundary is one that has been acknowledged under ORS 197.251, 197.625 or 197.626. Findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);

(ii) Areas that do not require a new exception cannot reasonably accommodate the use;

(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

(C) When a local government changes an established urban growth boundary applying Goal 14 as amended April 28, 2005, a goal exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals;

(D) For an exception to Goal 14 to allow urban development on rural lands, a local government must follow the applicable requirements of OAR 660-014-0030 or 660-014-0040, in conjunction with applicable requirements of this division;

(e) Goal 16 "Estuarine Resources";

(f) Goal 17 "Coastal Shorelands"; and

(g) Goal 18 "Beaches and Dunes."

(2) The exceptions process is generally not applicable to those statewide goals that provide general planning guidance or that include their own procedures for resolving conflicts between competing uses. However, exceptions to these goals, although not required, are possible and exceptions taken to these goals will be reviewed when submitted by a local jurisdiction. These statewide goals are:

(a) Goal 5 "Natural Resources, Scenic and Historic Areas, and Open Spaces";

(b) Goal 6 "Air, Water, and Land Resources Quality";

(c) Goal 7 "Areas Subject to Natural Hazards";

(d) Goal 8 "Recreational Needs";

(e) Goal 9 "Economic Development";

(f) Goal 10 "Housing" except as provided for in OAR 660-008-0035, "Substantive Standards for Taking a Goal 2, Part II, Exception Pursuant to ORS 197.303(3)";

(g) Goal 12 "Transportation" except as provided for by OAR 660-012-0070, "Exceptions for Transportation Improvements on Rural Land";

(h) Goal 13 "Energy Conservation";

(i) Goal 15 "Willamette River Greenway" except as provided for in OAR 660-004-0022(6); and

(j) Goal 19 "Ocean Resources."

(3) An exception to one goal or goal requirement does not ensure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.732

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84; LCDC 2-1987, f. & ef. 11-10-87; LCDC 3-1988(Temp), f. & cert. ef. 8-5-88; LCDC 6-1988, f. & cert. ef. 9-29-88; LCDD 3-2004, f. &

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cert. ef. 5-7-04; LCDD 4-2005, f. & cert. ef. 6-28-05; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0015

Inclusion as Part of the Plan

(1) A local government approving a proposed exception shall adopt, as part of its comprehensive plan, findings of fact and a statement of reasons that demonstrate that the standards for an exception have been met. The reasons and facts shall be supported by substantial evidence that the standard has been met.

(2) A local government denying a proposed exception shall adopt findings of fact and a statement of reasons that demonstrate that the standards for an exception have not been met. However, the findings need not be incorporated into the local comprehensive plan.

Stat. Auth.: ORS 197.040

Stats. Implemented ORS 197.732

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0018

Planning and Zoning for Exception Areas

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

(2) For “physically developed” and “irrevocably committed” exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

(a) That are the same as the existing land uses on the exception site;

(b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as “Rural Land” as defined by the goals, and are consistent with all other applicable goal requirements;

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

(c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, “Planning and Zoning of Unincorporated Communities”, if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22; and

(d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.

(4) “Reasons” Exceptions:

(a) When a local government takes an exception under the “Reasons” section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.

(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a “Reasons” exception, a new “Reasons” exception is required.

(c) When a local government includes land within an unincorporated community for which an exception under the “Reasons” section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.732

Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1986, f. & ef. 3-20-86; LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 8-2005, f. & cert. ef. 12-13-05; LCDD 7-2006, f. 10-13-06, cert. ef. 10-23-06; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0020

Goal 2, Part II(c), Exception Requirements

(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.

(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:

(a) “Reasons justify why the state policy embodied in the applicable goals should not apply.” The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;

(b) “Areas that do not require a new exception cannot reasonably accommodate the use”. The exception must meet the following requirements:

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;

(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

(C) The “alternative areas” standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

(c) “The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.” The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal excep-

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tion other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(3) If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.

(4) For the expansion of an unincorporated community described under OAR 660-022-0010, including an urban unincorporated community pursuant to OAR 660-022-0040(2), the reasons exception requirements necessary to address standards 2 through 4 of Goal 2, Part II(c), as described in of subsections (2)(b), (c) and (d) of this rule, are modified to also include the following:

(a) Prioritize land for expansion: First priority goes to exceptions lands in proximity to an unincorporated community boundary. Second priority goes to land designated as marginal land. Third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority is given to land of lower capability site class for agricultural land, or lower cubic foot site class for forest land; and

(b) Land of lower priority described in subsection (a) of this section may be included if land of higher priority is inadequate to accommodate the use for any one of the following reasons:

(A) Specific types of identified land needs cannot be reasonably accommodated on higher priority land;

(B) Public facilities and services cannot reasonably be provided to the higher priority area due to topographic or other physical constraints; or

(C) Maximum efficiency of land uses with the unincorporated community requires inclusion of lower priority land in order to provide public facilities and services to higher priority land.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.732

Hist.: LCDC 5-1982, f. & ef 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0022

Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

An exception under Goal 2, Part II(c) may be taken for any use not allowed by the applicable goal(s) or for a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule. Reasons that may allow an exception to Goal 11 to provide sewer service to rural lands are described in OAR 660-011-0060. Reasons that may allow transportation facilities and improvements that do not meet the requirements of OAR 660-012-0065 are provided in OAR 660-012-0070. Reasons that rural lands are irrevocably committed to urban levels of development are provided in OAR 660-014-0030. Reasons that may justify the establishment of new urban development on undeveloped rural land are provided in OAR 660-014-0040.

(1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

(A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

(2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned that require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.

(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts may include, but are not limited to, the following:

(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports;

(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas; or

(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages that support the decision.

(4) Expansion of Unincorporated Communities: For the expansion of an Unincorporated Community defined under OAR 660-022-0010(10) the requirements of subsections (a) through (c) of this section apply:

(a) Appropriate reasons and facts may include findings that there is a demonstrated need for additional land in the community to accommodate a specific rural use based on Goals 3-19 and a demonstration that either:

(A) The use requires a location near a resource located on rural land;

or

(B) The use has special features necessitating its location in an expanded area of an existing unincorporated community, including:

(i) For industrial use, it would have a significant comparative advantage due to its location such as, for example, that it must be near a rural energy facility, or near products available from other activities only in the surrounding area, or that it is reliant on an existing work force in an existing unincorporated community;

(ii) For residential use, the additional land is necessary to satisfy the need for additional housing in the community generated by existing industrial, commercial, or other economic activity in the surrounding area. The plan must include an economic analysis showing why the type and density of planned housing cannot be accommodated in an existing exception area or urban growth boundary, and is most appropriate at the particular proposed location. The reasons cannot be based on market demand for housing, nor on a projected continuation of past rural population distributions.

(b) The findings of need must be coordinated and consistent with the comprehensive plan for other exception areas, unincorporated communities, and urban growth boundaries in the area. For purposes of this subsection, "area" includes those communities, exception areas, and urban growth boundaries that may be affected by an expansion of a community boundary, taking into account market, economic, and other relevant factors.

(c) Expansion of the unincorporated community boundary requires a demonstrated ability to serve both the expanded area and any remaining infill development potential in the community, at the time of development, with the level of facilities determined to be appropriate for the existing unincorporated community.

(5) Expansion of Urban Unincorporated Communities: In addition to the requirements of section (4) of this rule, the expansion of an urban unincorporated community defined under OAR 660-022-0010(9) shall comply with OAR 660-022-0040.

(6) Willamette Greenway: Within an urban area designated on the approved Willamette Greenway Boundary maps, the siting of uses that are neither water-dependent nor water-related within the setback line required by section C.3.k of Goal 15 may be approved where reasons demonstrate the following:

(a) The use will not have a significant adverse effect on the greenway values of the site under consideration or on adjacent land or water areas;

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(b) The use will not significantly reduce the sites available for water-dependent or water-related uses within the jurisdiction;

(c) The use will provide a significant public benefit; and

(d) The use is consistent with the legislative findings and policy in ORS 390.314 and the Willamette Greenway Plan approved by the commission under ORS 390.322.

(7) Goal 16 — Water-Dependent Development: To allow water-dependent industrial, commercial, or recreational uses that require an exception in development and conservation estuaries, an economic analysis must show that there is a reasonable probability that the proposed use will locate in the planning area during the planning period, considering the following:

(a) Goal 9 or, for recreational uses, the Goal 8 Recreation Planning provisions;

(b) The generally predicted level of market demand for the proposed use;

(c) The siting and operational requirements of the proposed use including land needs, and as applicable, moorage, water frontage, draft, or similar requirements;

(d) Whether the site and surrounding area are able to provide for the siting and operational requirements of the proposed use; and

(e) The economic analysis must be based on the Goal 9 element of the County Comprehensive Plan and must consider and respond to all economic needs information available or supplied to the jurisdiction. The scope of this analysis will depend on the type of use proposed, the regional extent of the market and the ability of other areas to provide for the proposed use.

(8) Goal 16 – Other Alterations or Uses: An exception to the requirement limiting dredge and fill or other reductions or degradations of natural values to water-dependent uses or to the natural and conservation management unit requirements limiting alterations and uses is justified, where consistent with ORS chapter 196, in any of the circumstances specified in subsections (a) through (e) of this section:

(a) Dredging to obtain fill for maintenance of an existing functioning dike where an analysis of alternatives demonstrates that other sources of fill material, including adjacent upland soils or stockpiling of material from approved dredging projects, cannot reasonably be utilized for the proposed project or that land access by necessary construction machinery is not feasible;

(b) Dredging to maintain adequate depth to permit continuation of the present level of navigation in the area to be dredged;

(c) Fill or other alteration for a new navigational structure where both the structure and the alteration are shown to be necessary for the continued functioning of an existing federally authorized navigation project such as a jetty or a channel;

(d) An exception to allow minor fill, dredging, or other minor alteration of a natural management unit for a boat ramp or to allow piling and shoreline stabilization for a public fishing pier;

(e) Dredge or fill or other alteration for expansion of an existing public non-water-dependent use or a nonsubstantial fill for a private non-water-dependent use (as provided for in ORS 196.825) where:

(A) A Countywide Economic Analysis based on Goal 9 demonstrates that additional land is required to accommodate the proposed use;

(B) An analysis of the operational characteristics of the existing use and proposed expansion demonstrates that the entire operation or the proposed expansion cannot be reasonably relocated; and

(C) The size and design of the proposed use and the extent of the proposed activity are the minimum amount necessary to provide for the use.

(f) In each of the situations set forth in subsections (7)(a) to (e) of this rule, the exception must demonstrate that the proposed use and alteration (including, where applicable, disposal of dredged materials) will be carried out in a manner that minimizes adverse impacts upon the affected aquatic and shoreland areas and habitats.

(9) Goal 17 — Incompatible Uses in Coastal Shoreland Areas: Exceptions are required to allow certain uses in Coastal Shoreland areas consistent with subsections (a) through (e) of this section, where applicable:

(a) For purposes of this section, “Coastal Shoreland Areas” include:

(A) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources and historic and archaeological sites;

(B) Shorelands in urban and urbanizable areas, in rural areas built upon or irrevocably committed to non-resource use and shorelands in unincorporated communities pursuant to OAR chapter 660, division 22 (Unincorporated Communities) that are suitable for water-dependent uses;

(C) Designated dredged material disposal sites; and

(D) Designated mitigation sites.

(b) To allow a use that is incompatible with Goal 17 requirements for coastal shoreland areas listed in subsection (9)(a) of this rule, the exception must demonstrate:

(A) A need, based on Goal 9, for additional land to accommodate the proposed use;

(B) Why the proposed use or activity needs to be located on the protected site, considering the unique characteristics of the use or the site that require use of the protected site; and

(C) That the project cannot be reduced in size or redesigned to be consistent with protection of the site and, where applicable, consistent with protection of natural values.

(c) Exceptions to convert a dredged material disposal site or mitigation site to another use must also either not reduce the inventory of designated and protected sites in the affected area below the level identified in the estuary plan or be replaced through designation and protection of a site with comparable capacity in the same area.

(d) Uses that would convert a portion of a major marsh, coastal headland, significant wildlife habitat, exceptional aesthetic resource, or historic or archaeological site must use as little of the site as possible and be designed and located and, where appropriate, buffered to protect natural values of the remainder of the site.

(e) Exceptions to designate and protect, for water-dependent uses, an amount of shorelands less than that amount required by Goal 17 Coastal Shoreland Uses Requirement 2 must demonstrate that:

(A) Based on the Recreation Planning requirements of Goal 8 and the requirements of Goal 9, there is no need during the next 20-year period for the amount of water-dependent shorelands required by Goal 17 Coastal Shoreland Uses Requirement 2 for all cities and the county in the estuary. The Goal 8 and Goal 9 analyses must be conducted for the entire estuary and its shorelands, and must consider the water-dependent use needs of all local government jurisdictions along the estuary, including the port authority, if any, and be consistent with the Goal 8 Recreation Planning elements and Goal 9 elements of the comprehensive plans of those jurisdictions; and

(B) There is a demonstrated need for additional land to accommodate the proposed use(s), based on one or more of the requirements of Goals 3 to 18.

(10) Goal 18 — Foredune Breaching: A foredune may be breached when the exception demonstrates that an existing dwelling located on the foredune is experiencing sand inundation and the sand grading or removal:

(a) Does not remove any sand below the grade of the dwelling;

(b) Is limited to the immediate area in which the dwelling is located;

(c) Retains all graded or removed sand within the dune system by placing it on the beach in front of the dwelling; and

(d) Is consistent with the requirements of Goal 18 “Beaches and Dunes” Implementation Requirement 1.

(11) Goal 18 — Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 “Beaches and Dunes”, Implementation Requirement. Reasons that justify why this state policy embodied in Goal 18 should not apply shall demonstrate that:

(a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or the use is of minimal value;

(b) The use is designed to minimize adverse environmental effects; and

(c) The exceptions requirements of OAR 660-004-0020 are met.

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.012, 197.040, 197.712, 197.717, 197.732

Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84; LCDC 4-1985, f. & ef. 8-8-85; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDD 7-1999, f. & cert. ef. 8-20-99; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 6-2006, f. 7-13-06, cert. ef. 7-14-06; LCDD 9-2006, f. & cert. ef. 11-15-06; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0025

Exception Requirements for Land Physically Developed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660-004-0000(1).

(2) Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent

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and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

Stat. Auth.: ORS 197
Stats. Implemented: ORS 197.732
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

(a) A “committed exception” is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).

(b) For the purposes of this rule, an “exception area” is that area of land for which a “committed exception” is taken.

(c) An “applicable goal,” as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

- (a) The characteristics of the exception area;
- (b) The characteristics of the adjacent lands;
- (c) The relationship between the exception area and the lands adjacent to it; and

(d) The other relevant factors set forth in OAR 660-004-0028(6).

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is “impossible.” For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

- (a) Farm use as defined in ORS 215.203;
- (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and
- (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.

(6) Findings of fact for a committed exception shall address the following factors:

- (a) Existing adjacent uses;
- (b) Existing public facilities and services (water and sewer lines, etc.);
- (c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a com-

mitted exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land’s actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;

(d) Neighborhood and regional characteristics;

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

(f) Physical development according to OAR 660-004-0025; and

(g) Other relevant factors.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.732 & 197.736
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 5-1985, f. & ef. 11-15-85; LCDC 4-1996, f. & cert. ef. 12-23-96; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0030

Notice and Adoption of an Exception

(1) Goal 2 requires that each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(2) A planning exception takes effect when the comprehensive plan or plan amendment is adopted by the city or county governing body. Adopted exceptions will be reviewed by the Commission when the comprehensive plan is reviewed for compliance with the goals through the acknowledgment or periodic review processes under OAR chapter 660, divisions 3 or 25, and by the Board when a plan amendment is reviewed as a post-acknowledgment plan amendment pursuant to OAR chapter 660, division 18.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625, 197.628 - 197.646 & 197.732
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

660-004-0035

Appeal of an Exception

(1) Prior to acknowledgment, an exception, or the failure to take a required exception, may be appealed to the Board pursuant to ORS 197.830, or to the Commission as an objection to the local government’s request for acknowledgment, pursuant to ORS 197.251 and OAR chapter 660, division 3.

(2) After acknowledgment, an exception taken as part of a plan amendment, or the failure to take a required exception when amending a plan, may be appealed to the Board pursuant to ORS 197.620 and OAR chapter 660, division 18.

(3) After acknowledgment, an exception taken as part of a periodic review work task submitted under OAR 660-025-0130, or failure to take a required exception when amending a plan under periodic review, may be appealed to the Commission pursuant to ORS 197.633 and OAR 660-025-0150.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.610 - 197.625, 197.732 & 197.830
Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

ADMINISTRATIVE RULES

660-004-0040

Application of Goal 14 to Rural Residential Areas

(1) The purpose of this rule is to specify how Goal 14 "Urbanization" applies to rural lands in acknowledged exception areas planned for residential uses.

(2)(a) This rule applies to lands that are not within an urban growth boundary, that are planned and zoned primarily for residential uses, and for which an exception to Goal 3 "Agricultural Lands", Goal 4 "Forest Lands", or both has been taken. Such lands are referred to in this rule as "rural residential areas".

(b) Sections (1) to (8) of this rule do not apply to the creation of a lot or parcel, or to the development or use of one single-family home on such lot or parcel, where the application for partition or subdivision was filed with the local government and deemed to be complete in accordance with ORS 215.427(3) before October 4, 2000, the effective date of sections (1) to (8) of this rule.

(c) This rule does not apply to types of land listed in (A) through (H) of this subsection:

(A) Land inside an acknowledged urban growth boundary;

(B) Land inside an acknowledged unincorporated community boundary established pursuant to OAR chapter 660, division 22;

(C) Land in an acknowledged urban reserve area established pursuant to OAR chapter 660, divisions 21 or 27;

(D) Land in an acknowledged destination resort established pursuant to applicable land use statutes and goals;

(E) Resource land, as defined in OAR 660-004-0005(2);

(F) Nonresource land, as defined in OAR 660-004-0005(3);

(G) Marginal land, as defined in former ORS 197.247 (1991 Edition);

or
(H) Land planned and zoned primarily for rural industrial, commercial, or public use.

(3)(a) This rule took effect on October 4, 2000.

(b) Some rural residential areas have been reviewed for compliance with Goal 14 and acknowledged to comply with that goal by the department or commission in a periodic review, acknowledgment, or post-acknowledgment plan amendment proceeding that occurred after the Oregon Supreme Court's 1986 ruling in 1000 Friends of Oregon v. LCDC, 301 Or 447 (Curry County), and before October 4, 2000. Nothing in this rule shall be construed to require a local government to amend its acknowledged comprehensive plan or land use regulations for those rural residential areas already acknowledged to comply with Goal 14 in such a proceeding. However, if such a local government later amends its plan's provisions or land use regulations that apply to any rural residential area, it shall do so in accordance with this rule.

(4) The rural residential areas described in subsection (2)(a) of this rule are "rural lands". Division and development of such lands are subject to Goal 14, which prohibits urban use of rural lands.

(5)(a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (7) of this rule.

(b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.

(c) For purposes of this section, "rural residential zone currently in effect" means a zone applied to a rural residential area that was in effect on October 4, 2000, and acknowledged to comply with the statewide planning goals.

(6) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.

(7)(a) The creation of any new lot or parcel smaller than two acres in a rural residential area shall be considered an urban use. Such a lot or parcel may be created only if an exception to Goal 14 is taken. This subsection shall not be construed to imply that creation of new lots or parcels two acres or larger always complies with Goal 14. The question of whether the creation of such lots or parcels complies with Goal 14 depends upon compliance with all provisions of this rule.

(b) Each local government must specify a minimum area for any new lot or parcel that is to be created in a rural residential area. For the purposes of this rule, that minimum area shall be referred to as "the minimum lot size."

(c) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect.

(d) If, on October 4, 2000, a local government's land use regulations specify a minimum lot size smaller than two acres, the area of any new lot or parcel created shall equal or exceed two acres.

(e) A local government may authorize a planned unit development (PUD), specify the size of lots or parcels by averaging density across a parent parcel, or allow clustering of new dwellings in a rural residential area only if all conditions set forth in paragraphs (7)(e)(A) through (7)(e)(H) are met:

(A) The number of new dwelling units to be clustered or developed as a PUD does not exceed 10;

(B) The number of new lots or parcels to be created does not exceed 10;

(C) None of the new lots or parcels will be smaller than two acres;

(D) The development is not to be served by a new community sewer system;

(E) The development is not to be served by any new extension of a sewer system from within an urban growth boundary or from within an unincorporated community;

(F) The overall density of the development will not exceed one dwelling for each unit of acreage specified in the local government's land use regulations on October 4, 2000 as the minimum lot size for the area;

(G) Any group or cluster of two or more dwelling units will not force a significant change in accepted farm or forest practices on nearby lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices there; and

(H) For any open space or common area provided as a part of the cluster or planned unit development under this subsection, the owner shall submit proof of nonrevocable deed restrictions recorded in the deed records. The deed restrictions shall preclude all future rights to construct a dwelling on the lot, parcel, or tract designated as open space or common area for as long as the lot, parcel, or tract remains outside an urban growth boundary.

(f) Except as provided in subsection (e) of this section, a local government shall not allow more than one permanent single-family dwelling to be placed on a lot or parcel in a rural residential area. Where a medical hardship creates a need for a second household to reside temporarily on a lot or parcel where one dwelling already exists, a local government may authorize the temporary placement of a manufactured dwelling or recreational vehicle.

(g) In rural residential areas, the establishment of a new "mobile home park" or "manufactured dwelling park" as defined in ORS 446.003(23) and (30) shall be considered an urban use if the density of manufactured dwellings in the park exceeds the density for residential development set by this rule's requirements for minimum lot and parcel sizes. Such a park may be established only if an exception to Goal 14 is taken.

(h) A local government may allow the creation of a new parcel or parcels smaller than a minimum lot size required under subsections (a) through (d) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (D) of this subsection exist:

(A) The parcel to be divided has two or more permanent habitable dwellings on it;

(B) The permanent habitable dwellings on the parcel to be divided were established there before October 4, 2000;

(C) Each new parcel created by the partition would have at least one of those permanent habitable dwellings on it; and

(D) The partition would not create any vacant parcels on which a new dwelling could be established.

(E) For purposes of this rule, "habitable dwelling" means a dwelling that meets the criteria set forth in ORS 215.283(1)(p)(A)-(D).

(i) For rural residential areas designated after October 4, 2000, the affected county shall either:

(A) Require that any new lot or parcel have an area of at least ten acres, or

(B) Establish a minimum size of at least two acres for new lots or parcels in accordance with the applicable requirements for an exception to Goal 14 in OAR chapter 660, division 14. The minimum lot size adopted by the county shall be consistent with OAR 660-004-0018, "Planning and Zoning for Exception Areas."

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(8)(a) Notwithstanding the provisions of section (7) of this rule, divisions of rural residential land within one mile of an urban growth boundary for any city or urban area listed in paragraphs (A) through (E) of this subsection shall be subject to the provisions of subsections (8)(b) and (8)(c).

- (A) Ashland;
- (B) Central Point;
- (C) Medford;
- (D) Newberg;
- (E) Sandy.

(b) Any division of rural residential land in an urban reserve area shall be done in accordance with the acknowledged urban reserve ordinance or acknowledged regional growth plan of a city or urban area listed in subsection (8)(a) that:

(A) has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR chapter 660, division 21; or

(B) is part of a regional growth plan that contains at least a twenty-year regional urban reserve of land beyond the land contained within the collective urban growth boundaries of the participating cities, and that has been acknowledged through the process prescribed for Regional Problem Solving in ORS 197.652 through 197.658.

(c) Notwithstanding the provisions of section (7) of this rule, if any part of a lot or parcel to be divided is less than one mile from an urban growth boundary for a city or urban area listed in subsection (8)(a), and if that city or urban area does not have an urban reserve area acknowledged to comply with OAR chapter 660, division 21, or is not part of an acknowledged regional growth plan as described in subsection (b), paragraph (B), of this section, the minimum area of any new lot or parcel there shall be ten acres.

(d) Notwithstanding the provisions of section (7), if Metro has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR chapter 660, division 21 or division 27, any land division of rural residential land in that urban reserve shall be done in accordance with the applicable acknowledged comprehensive plan and zoning provisions adopted to implement the urban reserve.

(e) Notwithstanding the provisions of section (7), if any part of a lot or parcel to be divided is less than one mile from the urban growth boundary for the Portland metropolitan area and is in a rural residential area, and if Metro has not designated an urban reserve that contains at least a twenty-year reserve of land acknowledged to comply with either OAR chapter 660, division 21 or division 27, the minimum area of any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies within the area governed by the Columbia River Gorge National Scenic Area Act, the division shall be done in accordance with the provisions of that act.

(f) Notwithstanding the provisions of section (7) and subsection (8)(e), a local government may establish minimum area requirements smaller than twenty acres for some of the lands described in subsection (8)(e). The selection of those lands and the minimum established for them shall be based on an analysis of the likelihood that such lands will urbanize, of their current parcel and lot sizes, and of the capacity of local governments to serve such lands efficiently with urban services at densities of at least 10 units per net developable acre. In no case shall the minimum parcel area requirement set for such lands be smaller than 10 acres.

(g) A local government may allow the creation of a new parcel, or parcels, smaller than a minimum lot size required under subsections (a) through (f) of this section without an exception to Goal 14 only if the conditions described in paragraphs (A) through (G) of this subsection exist:

(A) The parcel to be divided has two or more permanent, habitable dwellings on it;

(B) The permanent, habitable dwellings on the parcel to be divided were established there before October 4, 2000;

(C) Each new parcel created by the partition would have at least one of those permanent, habitable dwellings on it;

(D) The partition would not create any vacant parcels on which new dwellings could be established;

(E) The resulting parcels shall be sized to promote efficient future urban development by ensuring that one of the parcels is the minimum size necessary to accommodate the residential use of the parcel;

(F) For purposes of this rule, habitable dwelling means a dwelling that meets the criteria set forth in ORS 215.213(1)(q)(A)-(D) or ORS 215.283(1)(p)(A)-(D), whichever is applicable; and

(G) The parcel is not in an area designated as rural reserve under OAR chapter 660, division 27, except as provided under OAR 660-027-0070.

(9) The development, placement, or use of one single-family dwelling on a lot or parcel lawfully created in an acknowledged rural residential area is allowed under this rule and Goal 14, subject to all other applicable laws.

Stat. Auth.: ORS 197.040, 195.141

Stats. Implemented: ORS 197.175 & 197.732, 195.145, 195.141

Hist.: LCDD 7-2000, f. 6-30-00, cert. ef. 10-4-00; LCDD 3-2001, f. & cert. ef. 4-3-01; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 1-2011, f. & cert. ef. 2-2-11; LCDD 3-2011, f. & cert. ef. 3-16-11

Rule Caption: Minor and technical amendments to conform to law, clarify wording and correct references.

Adm. Order No.: LCDD 4-2011

Filed with Sec. of State: 3-16-2011

Certified to be Effective: 3-16-11

Notice Publication Date: 11-1-2010

Rules Amended: 660-033-0010, 660-033-0020, 660-033-0030, 660-033-0120, 660-033-0130, 660-033-0135, 660-033-0140, 660-033-0145

Subject: Rules were modified to make minor and technical amendments to: conform to statutes, laws and rules; respond to Land Use Board of Appeals and other court opinions; clarify ambiguous and unclear wording consistent with the intent of the rule; update and correct references to rules, statutes or other documents and correct grammar.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-033-0010

Purpose

The purpose of this division is to preserve and maintain agricultural lands as defined by Goal 3 for farm use, and to implement ORS 215.203 through 215.327 and 215.438 through 215.459 and 215.700 through 215.799.

Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDD 4-2011, f. & cert. ef. 3-16-11

660-033-0020

Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR chapter 660 shall apply. In addition, the following definitions shall apply:

(1)(a) "Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

(C) Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

(b) Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;

(c) "Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4.

(2)(a) "Commercial Agricultural Enterprise" consists of farm operations that will:

(A) Contribute in a substantial way to the area's existing agricultural economy; and

(B) Help maintain agricultural processors and established farm markets.

(b) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.

(3) "Contiguous" means connected in such a manner as to form a single block of land.

(4) "Date of Creation and Existence". When a lot, parcel or tract is reconfigured pursuant to applicable law after November 4, 1993, the effect of which is to qualify a lot, parcel or tract for the siting of a dwelling, the

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date of the reconfiguration is the date of creation or existence. Reconfigured means any change in the boundary of the lot, parcel or tract.

(5) "Eastern Oregon" means that portion of the state lying east of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

(6) "Exception Area" means an area no longer subject to the requirements of Goal 3 or 4 because the area is the subject of a site specific exception acknowledged pursuant to ORS 197.732 and OAR chapter 660, division 4.

(7)(a) "Farm Use" as that term is used in ORS chapter 215 and this division means "farm use" as defined in ORS 215.203.

(b) As used in the definition of "farm use" in ORS 215.203 and in this division:

(A) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products; and

(B) "Products or by-products raised on such land" means that those products or by-products are raised on the farm operation where the preparation occurs or on other farm land provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land.

(8)(a) "High-Value Farmland" means land in a tract composed predominantly of soils that are:

(A) Irrigated and classified prime, unique, Class I or II; or

(B) Not irrigated and classified prime, unique, Class I or II.

(b) In addition to that land described in subsection (a) of this section, high-value farmland, if outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture taken prior to November 4, 1993. "Specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees, or vineyards, but not including seed crops, hay, pasture or alfalfa;

(c) In addition to that land described in subsection (a) of this section, high-value farmland, if in the Willamette Valley, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:

(A) Subclassification IIIe, specifically, Bellpine, Bornstedt, Burlington, Briedwell, Carlton, Cascade, Chehalem, Cornelius Variant, Cornelius and Kinton, Helvetia, Hillsboro, Hult, Jory, Kinton, Latourell, Laurelwood, Melbourne, Multnomah, Nekia, Powell, Price, Quatama, Salkum, Santiam, Saum, Sawtell, Silverton, Veneta, Willakenzie, Woodburn and Yamhill;

(B) Subclassification IIIw, specifically, Concord, Conser, Cornelius Variant, Dayton (thick surface) and Sifton (occasionally flooded);

(C) Subclassification IVe, specifically, Bellpine Silty Clay Loam, Carlton, Cornelius, Jory, Kinton, Latourell, Laurelwood, Powell, Quatama, Springwater, Willakenzie and Yamhill; and

(D) Subclassification IVw, specifically, Awbrig, Bashaw, Courtney, Dayton, Natroy, Noti and Whiteson.

(d) In addition to that land described in subsection (a) of this section, high-value farmland, if west of the summit of the Coast Range and used in conjunction with a dairy operation on January 1, 1993, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:

(A) Subclassification IIIe, specifically, Astoria, Hembre, Knappa, Meda, Quillayutte and Winema;

(B) Subclassification IIIw, specifically, Brenner and Chitwood;

(C) Subclassification IVe, specifically, Astoria, Hembre, Meda, Nehalem, Neskowin and Winema; and

(D) Subclassification IVw, specifically, Coquille.

(e) In addition to that land described in subsection (a) of this section, high-value farmland includes tracts located west of U.S. Highway 101 composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in subsection (a) of this section and the following soils:

(A) Subclassification IIIw, specifically, Ettersburg Silt Loam and Crofland Silty Clay Loam;

(B) Subclassification IIIe, specifically, Klooquh Silty Clay Loam and Winchuck Silt Loam; and

(C) Subclassification IVw, specifically, Huffling Silty Clay Loam.

(f) Lands designated as "marginal lands" according to the marginal lands provisions adopted before January 1, 1993, and according to the criteria in former ORS 215.247 (1991), are excepted from this definition of "high-value farmlands";

(9) "Irrigated" means watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. For the purposes of this division, an area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.

(10) "Lot" shall have the meaning set forth in ORS 92.010.

(11) "Manufactured dwelling" and "manufactured home" shall have the meaning set forth in ORS 446.003(26).

(12) "Parcel" shall have the meaning set forth in ORS 215.010.

(13) "Tract" means one or more contiguous lots or parcels under the same ownership.

(14) "Western Oregon" means that portion of the state lying west of a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, then south along the western boundaries of the Counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon.

(15) "Willamette Valley" is Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Benton and Lane Counties lying east of the summit of the Coast Range.

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

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283 & 215.700 - 215.710

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 4-2011, f. & cert. ef. 3-16-11

660-033-0030

Identifying Agricultural Land

(1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.

(2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands." A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in OAR 660-033-0020(1).

(3) Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.

(4) When inventoried land satisfies the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

(5) More detailed data on soil capability than is contained in the U.S. Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.

(6) Any county that adopted marginal lands provisions before January 1, 1993, may continue to designate lands as "marginal lands" according to those provisions and criteria in former ORS 197.247 (1991), as long as the county has not applied the provisions of ORS 215.705 to 215.750 to lands zoned for exclusive farm use.

(7) For the purposes of approving a land use application under ORS 215.705, the soil class, soil rating or other soil designation of a specific lot or parcel may be changed if:

(a) The property owner submits a statement of agreement from the NRCS that the soil class, soil rating or other soil designation should be adjusted based on new information; or

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(b) Submits a report from a soils scientist whose credentials are acceptable to the Oregon Department of Agriculture that the soil class, soil rating or other soil designation should be changed; and

(c) Submits a statement from the Oregon Department of Agriculture that the Director of Agriculture or the director's designee has reviewed the report described in subsection (7)(b) of this rule and finds the analysis in the report to be soundly and scientifically based.

(8) For the purposes of approving a land use application under ORS 215.705, soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the NRCS in its most recent publication for that class, rating or designation before November 4, 1993, except for changes made pursuant to section (7) of this rule. By December 1, 1998, the department shall provide to all counties and other interested persons a list of soils that qualify land as high-value farmland under this section.

(9) For the purposes of approving a land use application under OAR 660-033-0090, 660-033-0120, 660-033-0130 and 660-033-0135, soil classes, soil ratings or other soil designations used in or made pursuant to this definition are those of the NRCS in its most recent publication for that class, rating or designation.

Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243 & 215.700 - 215.710
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 4-2011, f. & cert. ef. 3-16-11

660-033-0120

Uses Authorized on Agricultural Lands

The specific development and uses listed in the following table are allowed or may be allowed in the areas that qualify for the designation pursuant to this division. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

(1) A — Use is allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns only to the extent authorized by law.

(2) R — Use may be allowed, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns.

(3) * — Use not allowed.

(4) # — Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 197.040 & 197.245
Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780
Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert. ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 4-2011, f. & cert. ef. 3-16-11

660-033-0130

Minimum Standards Applicable to the Schedule of Allowed and Conditional Uses

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.

(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is

described in a master plan adopted under the provisions of OAR chapter 660, division 34.

(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of June 17, 2010.

(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.

(3)(a) A dwelling may be approved on a pre-existing lot or parcel if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule; and

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a);

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot or parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use;

(ii) The dwelling will comply with the provisions of ORS 215.296(1); and

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the Oregon Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

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(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

- (i) Identified in OAR 660-033-0020(8)(c) or (d);
- (ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and
- (iii) Twenty-one acres or less in size; and

(C) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(D) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(E) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

(i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(e) If land is in a zone that allows both farm and forest uses, is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

- (A) Exceed the facilities and service capabilities of the area;
- (B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.

(4) A single-family residential dwelling not provided in conjunction with farm use requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

(a) In the Willamette Valley, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings

and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph; and

(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11), the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable

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tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) through 215.213(8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.

(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(6) A facility for the primary processing of forest products shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period that is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(8)(a) A lawfully established dwelling is a single-family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be:

(i) Removed, demolished, or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed

records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9)(a) To qualify, a dwelling shall be occupied by relatives whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the "homesite," as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p). Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division is allowed.

(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.

(13) Roads, highways and other transportation facilities, and improvements not otherwise allowed under this rule may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

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(14) Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) Utility facilities necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to OAR 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall have no effect on the original approval.

(f) In addition to the provisions of subsections (16)(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(g) The provisions of subsections (16)(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(17) A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. Permanent features of a power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213(1)(a) or 215.283(1)(a), as in effect before January 1, 2010, the effective date of 2009 Oregon Laws, chapter 850, section 14, may be expanded subject to:

(A) The requirements of subsection (c) of this section; and

(B) Conditional approval of the county in the manner provided in ORS 215.296.

(c) A nonconforming use described in subsection (b) of this section may be expanded under this section if:

(A) The use was established on or before January 1, 2009; and

(B) The expansion occurs on:

(i) The tax lot on which the use was established on or before January 1, 2009; or

(ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and that was owned by the applicant on January 1, 2009.

(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in this section, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18 hole regulation golf course or a combination nine and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

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(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing;

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(22) A power generation facility may include on-site and off-site facilities for temporary workforce housing for workers constructing a power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. Permanent features of a power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

(24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator;

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling; or

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or

(iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a non-residential use when farm worker housing is no longer required; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(3) or (4), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

(i) At least \$40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(8); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm;

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

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(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-033-0100.

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code.

(25) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center is allowed, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.

(26) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this section may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the Oregon Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the Oregon Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(28) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. A county shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) Composting operations and facilities allowed on land not defined as high-value farmland shall meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(a) A public right of way;

(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(c) The property to be served by the utility.

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of 3,000 or fewer persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this division.

(34) An outdoor mass gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month planning period is subject to review by a county planning commission under the provisions of ORS 433.763.

(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and

(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).

(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances, including but not limited to on-site and off-site facilities for temporary workforce housing for workers constructing a wind power generation facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Temporary workforce housing facilities not included in the initial approval may be considered through a minor amendment request filed after a decision to approve a power generation facility. A minor amendment request shall be subject to OAR 660-033-0130(5) and shall have no effect on the original approval. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:

(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B);

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils;

(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary;

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(D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration; and

(E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices;

(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040 & 215.213

Hist.: LCDC 6-1992, f. & cert. ef. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 7-2010(Temp), f. & cert. ef. 6-17-10 thru 11-30-10; LCDD 9-2010, f. & cert. ef. 9-24-10; LCDD 11-2010, f. & cert. ef. 11-23-10; LCDD 4-2011, f. & cert. ef. 3-16-11

660-033-0135

Dwellings in Conjunction with Farm Use

(1) On land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The parcel on which the dwelling will be located is at least:

(A) 160 acres and not designated rangeland; or

(B) 320 acres and designated rangeland; or

(C) As large as the minimum parcel size if located in a zoning district with an acknowledged minimum parcel size larger than indicated in paragraph (A) or (B) of this subsection.

(b) The subject tract is currently employed for farm use, as defined in ORS 215.203.

(c) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.

(d) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p)(1999 Edition), there is no other dwelling on the subject tract.

(2)(a) If a county prepares the potential gross sales figures pursuant to subsection (c) of this section, the county may determine that on land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:

(A) The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area that includes all tracts wholly or partially within one mile from the perimeter of the subject tract;

(B) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in paragraph (A) of this subsection;

(C) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in paragraph (B) of this subsection;

(D) The subject lot or parcel on which the dwelling is proposed is not less than 10 acres in western Oregon or 20 acres in eastern Oregon;

(E) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract;

(F) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and

(G) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by paragraph (C) of this subsection.

(b) In order to identify the commercial farm or ranch tracts to be used in paragraph (2)(a)(A) of this rule, the gross sales capability of each tract in the study area including the subject tract must be determined, using the gross sales figures prepared by the county pursuant to subsection (2)(c) of this section as follows:

(A) Identify the study area. This includes all the land in the tracts wholly or partially within one mile of the perimeter of the subject tract;

(B) Determine for each tract in the study area the number of acres in every land classification from the county assessor's data;

(C) Determine the potential earning capability for each tract by multiplying the number of acres in each land class by the gross sales per acre for each land class provided by the commission pursuant to subsection (2)(c) of this section. Add these to obtain the potential earning capability for each tract;

(D) Identify those tracts capable of grossing at least \$10,000 based on the data generated in paragraph (C) of this subsection; and

(E) Determine the median size and median gross sales capability for those tracts capable of generating at least \$10,000 in annual gross sales to use in paragraphs (2)(a)(A) and (B) of this subsection.

(c) In order to review a farm dwelling pursuant to subsection (2)(a) of this section, a county may prepare, subject to review by the director, a table of the estimated potential gross sales per acre for each assessor land class (irrigated and nonirrigated) required in subsection (2)(b) of this section. The director shall provide assistance and guidance to a county in the preparation of this table. The table shall be prepared as follows:

(A) Determine up to three indicator crop types with the highest harvested acreage for irrigated and for nonirrigated lands in the county using the most recent OSU Extension Service Commodity Data Sheets, Report No. 790, "Oregon County and State Agricultural Estimates," or other USDA/Extension Service documentation;

(B) Determine the combined weighted average of the gross sales per acre for the three indicator crop types for irrigated and for nonirrigated lands, as follows:

(i) Determine the gross sales per acre for each indicator crop type for the previous five years (i.e., divide each crop type's gross annual sales by the harvested acres for each crop type);

(ii) Determine the average gross sales per acre for each crop type for three years, discarding the highest and lowest sales per acre amounts during the five year period;

(iii) Determine the percentage each indicator crop's harvested acreage is of the total combined harvested acres for the three indicator crop types;

(iv) Multiply the combined sales per acre for each crop type identified under subparagraph (ii) of this paragraph by its percentage of harvested acres to determine a weighted sales per acre amount for each indicator crop; and

(v) Add the weighted sales per acre amounts for each indicator crop type identified in subparagraph (iv) of this paragraph. The result provides the combined weighted gross sales per acre.

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(C) Determine the average land rent value for irrigated and nonirrigated land classes in the county's exclusive farm use zones according to the annual "income approach" report prepared by the county assessor pursuant to ORS 308A.092; and

(D) Determine the percentage of the average land rent value for each specific land rent for each land classification determined in paragraph (C) of this subsection. Adjust the combined weighted sales per acre amount identified in subparagraph (B)(v) of this subsection using the percentage of average land rent (i.e., multiply the weighted average determined in subparagraph (B)(v) of this subsection by the percent of average land rent value from paragraph (C) of this subsection). The result provides the estimated potential gross sales per acre for each assessor land class that will be provided to each county to be used as explained under paragraph (2)(b)(C) of this section.

(3) On land not identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that produced in the last two years or three of the last five years the lower of the following:

(A) At least \$40,000 in gross annual income from the sale of farm products; or

(B) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon; and

(b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on lands designated for exclusive farm use pursuant to ORS chapter 215 or for mixed farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the farm or ranch operation;

(c) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section; and

(d) In determining the gross income required by subsection (a) of this section:

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

(B) Only gross income from land owned, not leased or rented, shall be counted; and

(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

(4) On land identified as high-value farmland, a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The subject tract is currently employed for the farm use, as defined in ORS 215.203, that produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years; and

(b) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on lands designated for exclusive farm use pursuant to ORS chapter 215 or for mixed farm/forest use pursuant to OAR 660-006-0057 owned by the farm or ranch operator or on the farm or ranch operation; and

(c) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section;

(d) In determining the gross income required by subsection (a) of this section:

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;

(B) Only gross income from land owned, not leased or rented, shall be counted; and

(C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.

(5)(a) For the purpose of sections (3) or (4) of this rule, noncontiguous lots or parcels zoned for farm use in the same county or contiguous counties may be used to meet the gross income requirements. Except for Hood River and Wasco counties and Jackson and Klamath counties, when a farm or ranch operation has lots or parcels in both "western" and "eastern" Oregon as defined by this division, lots or parcels in eastern or western Oregon may not be used to qualify a dwelling in the other part of the state.

(b) Prior to the final approval for a dwelling authorized by sections (3) and (4) of this rule that requires one or more contiguous or non contiguous

lots or parcels of a farm or ranch operation to comply with the gross farm income requirements, the applicant shall provide evidence that the covenants, conditions and restrictions form adopted as "Exhibit A" has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling and shall preclude:

(A) All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS chapter 215; and

(B) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.

(c) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located;

(d) Enforcement of the covenants, conditions and restrictions may be undertaken by the department or by the county or counties where the property subject to the covenants, conditions and restrictions is located;

(e) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the covenants, conditions and restrictions required by this section;

(f) The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(6) In counties that have adopted marginal lands provisions under former ORS 197.247 (1991 Edition) before January 1, 1993, a dwelling may be considered customarily provided in conjunction with farm use if it is not on a lot or parcel identified as high-value farmland and it meets the standards and requirements of ORS 215.213(2)(a) or (b).

(7) A dwelling may be considered customarily provided in conjunction with a commercial dairy farm as defined by OAR 660-033-0135(8) if:

(a) The subject tract will be employed as a commercial dairy as defined by OAR 660-033-0135(8);

(b) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy;

(c) Except as permitted by ORS 215.213(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract;

(d) The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm;

(e) The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and

(f) The Oregon Department of Agriculture has approved the following:

(A) A permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(B) A Producer License for the sale of dairy products under ORS 621.072.

(8) As used in this division, the following definitions apply:

(a) "Commercial dairy farm" is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by OAR 660-033-0135(3)(a) or (4)(a), whichever is applicable, from the sale of fluid milk; and

(b) "Farm or ranch operation" means all lots or parcels of land in the same ownership that are used by the farm or ranch operator for farm use as defined in ORS 215.203.

(9) A dwelling may be considered customarily provided in conjunction with farm use if:

(a) Within the previous two years, the applicant owned and operated a farm or ranch operation that earned the gross farm income in the last five years or four of the last seven years as required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable;

(b) The subject lot or parcel on which the dwelling will be located is:

(A) Currently employed for the farm use, as defined in ORS 215.203, that produced in the last two years or three of the last five years the gross

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farm income required by OAR 660-033-0135(3) or (4) of this rule, whichever is applicable; and

(B) At least the size of the applicable minimum lot size under OAR 215.780; and

(c) Except as permitted in ORS 215.213(1)(r) and 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract;

(d) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (a) of this section; and

(e) In determining the gross income required by subsections (a) and (b)(A) of this section:

(A) The cost of purchased livestock shall be deducted from the total gross income attributed to the tract; and

(B) Only gross income from land owned, not leased or rented, shall be counted.

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

Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780

Hist.: LCDC 3-1994, f. & cert. ef. 3-1-94; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 4-2011, f. & cert. ef. 3-16-11

660-033-0140

Permit Expiration Dates

(1) Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.

(2) A county may grant one extension period of up to 12 months if:

(a) An applicant makes a written request for an extension of the development approval period;

(b) The request is submitted to the county prior to the expiration of the approval period;

(c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and

(d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

(3) Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

(4) Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

(5)(a) If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.

(b) An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.

(6) For the purposes of section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(1)(q), (3) and (4), 215.283(1)(p), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).

Stat. Auth.: ORS 197.040 & 215

Stats. Implemented: ORS 197.015, 197.040, 197.230 & 197.245

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 4-2011, f. & cert. ef. 3-16-11

660-033-0145

Agriculture/Forest Zones

(1) Agriculture/forest zones may be established and uses allowed pursuant to OAR 660-006-0050;

(2) Land divisions in agriculture/forest zones may be allowed as provided for under OAR 660-006-0055; and

(3) Land may be replanned or rezoned to an agriculture/forest zone pursuant to OAR 660-006-0057.

Stat. Auth.: ORS 183, 197.040, 197.230 & 197.245

Stats. Implemented: ORS 197.040, 197.213, 197.215, 197.230, 197.245, 197.283, 197.700, 197.705, 197.720, 197.740, 197.750 & 197.780

Hist.: LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 4-2011, f. & cert. ef. 3-16-11

Oregon Board of Naturopathic Medicine Chapter 850

Rule Caption: Rule on reapplication of license when license has been disciplined.

Adm. Order No.: OBNM 1-2011

Filed with Sec. of State: 4-12-2011

Certified to be Effective: 4-12-11

Notice Publication Date: 3-1-2011

Rules Adopted: 850-050-0200

Subject: 850-050-0200 Reapplication

An applicant, licensee or certificate holder whose application for license or certificate, or whose license or certificate, has been denied or revoked, or who voluntarily surrendered the application for license or certificate, or the license or certificate, may not reapply for a minimum period of three years; unless otherwise stated in a Board order denying or revoking or accepting a voluntary surrender of the application, license or certificate.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-050-0200

Reapplication

An applicant, licensee or certificate holder whose application for license or certificate, or whose license or certificate, has been denied or revoked, or who voluntarily surrendered the application for license or certificate, or the license or certificate, may not reapply for a minimum period of three years; unless otherwise specified in a Board order denying or revoking or accepting a voluntary surrender of the application, license or certificate.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.110

Hist.: OBNM 1-2011, f. & cert. ef. 4-12-11

Rule Caption: Rule removes the reference to the AHFS 2009 which is no longer relevant.

Adm. Order No.: OBNM 2-2011

Filed with Sec. of State: 4-12-2011

Certified to be Effective: 4-12-11

Notice Publication Date: 3-1-2011

Rules Amended: 850-060-0225, 850-060-0226

Subject: Rule removes reference to AFHS, which was used as a guidance to establish formulary classifications.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-060-0225

Formulary Compendium

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

- (1) Abacavir;
- (2) Acarbose;
- (3) Acetic Acid;
- (4) Acetylcysteine;
- (5) Acitretin;
- (6) Acyclovir;
- (7) Adapalene;
- (8) Adenosine Monophosphate;
- (9) Albuterol Sulfate;
- (10) Alendronate;
- (11) Allopurinol;
- (12) Alprostadil;
- (13) Amantadine;
- (14) Amino Acids;
- (15) Amino Aspirins;
- (16) Aminoglycosides;
- (17) Aminolevulinic Acid;
- (18) Aminophylline;
- (19) Aminosalicic Acid;
- (20) Ammonium Chloride;
- (21) Ammonium lactate lotion 12%;
- (22) Amoxicillin;
- (23) Amoxicillin & Clavulanate;
- (24) Amphotericin B;
- (25) Ampicillin;
- (26) Ampicillin & Sulbactam;
- (27) Anastrozole;

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- (28) Anthralin;
- (29) Atorvastatin;
- (30) Atropine;
- (31) Atropine Sulfate;
- (32) Auranofin;
- (33) Azelaic Acid;
- (34) Azithromycin;
- (35) Bacampicillin;
- (36) Bacitracin;
- (37) Baclofen;
- (38) Becaplermin;
- (39) Belladonna;
- (40) Benazepril;
- (41) Benzodiazepines;
- (42) Benzoic Acid;
- (43) Benzonatate;
- (44) Betaine;
- (45) Betamethasone;
- (46) Bethanechol Chloride;
- (47) Bichloroacetic Acid*;
- (48) Bimatoprost Solution 0.03%;
- (49) Biologicals;
- (50) Bisphosphonates;
- (51) Bromocriptine;
- (52) Budesonide;
- (53) Buprenorphine;
- (54) Butorphanol;
- (55) Cabergoline;
- (56) Calcipotriene;
- (57) Calcitonin;
- (58) Calcitriol;
- (59) Carbamide Peroxide;
- (60) Carbidopa;
- (61) Carbol-Fuchsin;
- (62) Captopril;
- (63) Cefaclor;
- (64) Cefdinir;
- (65) Cefibuten;
- (66) Cefadroxil;
- (67) Cefditoren;
- (68) Cefixime;
- (69) Cefonicid Sodium;
- (70) Cefpodoxime Proxetil;
- (71) Cefprozil;
- (72) Cefübuten;
- (73) Cefuroxime;
- (74) Celecoxib;
- (75) Cellulose Sodium Phosphate;
- (76) Cenestin;
- (77) Cephalixin;
- (78) Cephadrine;
- (79) Chirocaine*;
- (80) Chloramphenicol;
- (81) Chloroquine;
- (82) Citrate Salts;
- (83) Clarithromycin;
- (84) Clindamycin;
- (85) Clioquinol;
- (86) Clostridium botulinum toxin (ab);
- (87) Cloxacillin;
- (88) Codeine;
- (89) Colchicine;
- (90) Colistimethate;
- (91) Collagenase;
- (92) Condylox;
- (93) Cortisone;
- (94) Coumadin;
- (95) Cromolyn Sodium;
- (96) Cyanocobalamin;
- (97) Cycloserine;
- (98) Cytisine;
- (99) Danazol;
- (100) Deferoxamine/Desferroxamine (Board approved certification required before therapeutic IV chelation is allowed);
- (101) Demeclocycline Hydrochloride;
- (102) Desmopressin;
- (103) Desoxyribonuclease;
- (104) Dexamethasone;
- (105) Dextran;
- (106) Dextromethorphan;
- (107) Dextrose;
- (108) Dextrothyroxine;
- (109) Diclofenac;
- (110) Dicloxacillin;
- (111) Dihydroergotamine Migranal;
- (112) Didanosine;
- (113) Dimethyl Sulfone (DMSO);
- (114) Digitalis;
- (115) Digitoxin;
- (116) Digoxin;
- (117) Dinoprostone;
- (118) Diphenhydramine;
- (119) Diphylline;
- (120) Dirithromycin;
- (121) DMPS (Board approved certification required before therapeutic IV chelation is allowed);
- (122) DMSA;
- (123) Doxercalciferol;
- (124) Doxycycline;
- (125) Dronabinol;
- (126) Dyclonine;
- (127) EDTA (Board approved certification required before therapeutic IV chelation is allowed);
- (128) Electrolyte Solutions;
- (129) Emtricitabine;
- (130) Enalapril;
- (131) Ephedrine;
- (132) Epinephrine*;
- (133) Epinephrine (auto-inject);
- (134) Ergoloid Mesylates;
- (135) Ergonovine Maleate;
- (136) Ergotamine;
- (137) Erythromycins;
- (138) Erythropoietin;
- (139) Estradiol;
- (140) Estriol;
- (141) Estrogen-Progestin Combinations;
- (142) Estrogens, Conjugated;
- (143) Estrogen, Esterified;
- (144) Estrone;
- (145) Estropipate;
- (146) Eszopiclone;
- (147) Ethyl Chloride;
- (148) Etidronate;
- (149) Etodolac;
- (150) Exenatide;
- (151) Ezetimibe;
- (152) Famciclovir;
- (153) Fentanyl;
- (154) Fibrinolysin;
- (155) Flavoxate;
- (156) Fluconazole;
- (157) Fludrocortisone Acetate;
- (158) Flunisolide;
- (159) Fluorides;
- (160) Fluoroquinolones;
- (161) Fluoroquinolines;
- (162) Fluorouracil;
- (163) Fluticasone propionate;
- (164) Fluvastatin;
- (165) Fosinopril;
- (166) Gaba Analogs;
- (167) Gabapentin;
- (168) Galantamine H. Br.;
- (169) Gamma-Hydroxy Butyrate;
- (170) Ganciclovir;
- (171) Gentamicin;
- (172) Gentian Violet;
- (173) Glycerin/Glycerol;
- (174) Griseofulvin;

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- (175) Guaifenesin;
(176) Heparin — subcutaneous, sublingual and heparin locks;
(177) Hexachlorophene;
(178) Homatropine Hydrobromide*;
(179) Human Growth Hormone;
(180) Hyaluronic Acid;
(181) Hyaluronidase;
(182) Hydrocodone;
(183) Hydrocortisone;
(184) Hydrogen Peroxide;
(185) Hydromorphone;
(186) Hydroquinone;
(187) Hydroxychloroquine;
(188) Hydroxypolyethoxydodecane*;
(189) Hyoscyamine;
(190) Iloprost Inhalation Solution;
(191) Imiquimod Cream (5%);
(192) Immune Globulins*;
(193) Indomethacin;
(194) Insulin;
(195) Interferon Alpha b w/Ribavirin;
(196) Iodine;
(197) Iodoquinol;
(198) Iron Preparations;
(199) Isosorbide Dinitrate;
(200) Isotretinoin;
(201) Itraconazole;
(202) Kanamycin Sulfate;
(203) Ketoconazole;
(204) Ketorolac;
(205) Lactulose;
(206) Lamivudine;
(207) Letrozole;
(208) Leucovorin Calcium;
(209) Levalbuteral;
(210) Levocarnitine;
(211) Levodopa;
(212) Levonorgestrel;
(213) Levorphanol;
(214) Levothyroxine;
(215) Lincomycin;
(216) Lindane;
(217) Liothyronine;
(218) Liotrix;
(219) Lisinopril;
(220) Lisuride;
(221) Lithium;
(222) Lovastatin;
(223) Mebendazole;
(224) Meclizine;
(225) Medroxyprogesterone;
(226) Medrysone;
(227) Mefloquine;
(228) Megestrol Acetate;
(229) Meloxicam;
(230) Memantine;
(231) Mercury, Ammoniated;
(232) Mesalamine;
(233) Metformin;
(234) Methadone;
(235) Methimazole;
(236) Methoxsalen;
(237) Methscopolamine;
(238) Methylergonovine;
(239) Methylprednisolone;
(240) Methylsulfonylethane (MSM);
(241) Methyltestosterone;
(242) Methysergide;
(243) Metronidazole;
(244) Miglitol;
(245) Minerals (Oral & Injectable);
(246) Minocycline;
(247) Misoprostol;
(248) Moexipril;
(249) Monobenzene;
(250) Morphine;
(251) Mupirocin;
(252) Nafarelin acetate;
(253) Naloxone;
(254) Naltrexone;
(255) Natamycin;
(256) Nateglinide;
(257) Nicotine;
(258) Nitroglycerin;
(259) Novobiocin;
(260) Nystatin;
(261) Olsalazine;
(262) Omeprazole;
(263) Opium;
(264) Over the Counter (OTC)
(265) Oxacillin;
(266) Oxamniquine;
(267) Oxaprozin;
(268) Oxtriphylline;
(269) Oxycodone;
(270) Oxygen;
(271) Oxymorphone;
(272) Oxytetracycline;
(273) Oxytocin*;
(274) Pancrelipase;
(275) Papain;
(276) Papavarine;
(277) Paramethasone;
(278) Paregoric;
(279) Penciclovir;
(280) Penicillamine (Board approved certification required before therapeutic IV chelation is allowed);
(281) Penicillin;
(282) Pentosan;
(283) Pentoxifylline;
(284) Pergolide;
(285) Perindopril;
(286) Permethrin;
(287) Peroxicam;
(288) Phenazopyridine;
(289) Phenylalkylamine;
(290) Phenylephrine*;
(291) Physostigmine;
(292) Pilocarpine;
(293) Pimecrolimus Cream 1%;
(294) Piperazine Citrate;
(295) Podophyllum Resin;
(296) Polymyxin B Sulfate;
(297) Polysaccharide-Iron Complex;
(298) Potassium Iodide;
(299) Potassium Supplements;
(300) Pramoxine;
(301) Pravastatin;
(302) Praziquantel;
(303) Prednisolone;
(304) Prednisone;
(305) Pregabalin;
(306) Progesterone;
(307) Progestins;
(308) Propionic Acids;
(309) Propylthiouracil;
(310) Prostaglandins;
(311) Proton Pump inhibitor;
(312) Pseudoephedrine;
(313) Pyrazinamide;
(314) Pyrethrins;
(315) Quinapril;
(316) Quinidine;
(317) Quinilones;
(318) Quinine Sulfate;
(319) Quinines;
(320) Quinolines;
(321) Ramopril;
(322) Rauwolfia Alkaloids;
(323) Rho(D) Immune globulins*;

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(324) Rifabutin;
(325) Rifampin;
(326) Rimantidine;
(327) Risendronate;
(328) Ranolazine;
(329) Salicylamide;
(330) Salicylate Salts;
(331) Salicylic Acid;
(332) Salsalate;
(333) Scopolamine;
(334) Selegiline;
(335) Selenium Sulfide;
(336) Sildenafil Citrate;
(337) Silver Nitrate;
(338) Simvastatin;
(339) Sitagliptin;
(340) Sodium Polystyrene Sulfonate;
(341) Sodium Tetradecyl Sulfate
(342) Sodium Thiosulfate;
(343) Spironolactone;
(344) Stavudine;
(345) Spectinomycin;
(346) Sucralfate;
(347) Sulfasalazine;
(348) Sulfonamide/Trimethoprim/Sulfones;
(349) Sulindac;
(350) Tacrolimus;
(351) Tazarotene topical gel;
(352) Telithromycin;
(353) Tenofovir;
(354) Testosterone;
(355) Tetracycline;
(356) Theophylline;
(357) Thiabendazole;
(358) Thyroid;
(359) Thyroxine;
(360) Tiagabine;
(361) Tibolone;
(362) Tiludronate;
(363) Tinidazole;
(364) Tobramycin;
(365) Tolmetin;
(366) Topical steroids;
(367) Tramadol;
(368) Trandolapril;
(369) Trazodone;
(370) Tretinoin;
(371) Triamcinolone;
(372) Triamterene;
(373) Trichloroacetic Acid*;
(374) Trimetazidine;
(375) Trioxsalen;
(376) Triptans;
(377) Troleandomycin;
(378) Undecylenic Acid;
(379) Urea;
(380) Urised;
(381) Ursodiol;
(382) Valacyclovir;
(383) Valproic Acid;
(384) Vancomycin;
(385) Varenicline;
(386) Verapamil;
(387) Verdenafil HCL;
(388) Vidarabine;
(389) Vitamins (Oral & Injectable);
(390) Yohimbine;
(391) Zalcitabine;
(392) Zidovudine;
(393) Zolpidem;
(394) Local Anesthetics:
(a) Benzocaine*;
(b) Bupivacaine*;
(c) Chloroprocaine*;
(d) Dyclonine*;

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

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 681.145

Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; BNE 3-2005, f. & cert. ef. 2-4-05; BNE 5-2005, f. & cert. ef. 6-10-05; Renumbered from 850-010-0225, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef. 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06; BNE 3-2007, f. & cert. ef. 6-12-07; BNE 1-2008, f. & cert. ef. 2-19-08; BNE 2-2008, f. & cert. ef. 3-21-08; BNE 6-2008, f. & cert. ef. 6-11-08; BNE 7-2008, f. & cert. ef. 12-8-08; BNE 2-2009, f. & cert. ef. 6-17-09; BNE 7-2009, f. 12-14-09, cert. ef. 1-1-10; OBNM 2-2011, f. & cert. ef. 4-12-11

850-060-0226

Formulary Compendium Classifications

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

- (1) Antihistamine Drugs;
 - (a) First Generation Antihistamine Drugs;
 - (A) Ethanolamine Derivatives;
 - (B) Ethylenediamine Derivatives;
 - (C) Phenothiazine Derivatives;
 - (D) Piperazine Derivatives;
 - (E) Propylamine Derivatives;
 - (F) Miscellaneous Derivatives;
 - (b) Second Generation Antihistamines;
- (2) Anti-Infective Agents;
 - (a) Anthelmintics;
 - (b) Antibacterials;
 - (A) Aminoglycosides;
 - (B) Cephalosporins;
 - (i) First Generation Cephalosporins;
 - (ii) Second Generation Cephalosporins;
 - (iii) Third Generation Cephalosporins;
 - (iv) Fourth Generation Cephalosporins;
 - (C) Miscellaneous β -Lactams;

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- (i) Carbacephems;
- (ii) Carbapenems;
- (iii) Cephamycins;
- (iv) Monobactams;
- (D) Chloramphenicol;
- (E) Macrolides;
- (i) Erythromycins;
- (ii) Ketolides;
- (iii) Other Macrolides;
- (F) Penicillins;
- (i) Natural Penicillins;
- (ii) Aminopenicillins;
- (iii) Penicillinase-resistant Penicillins;
- (iv) Extended-spectrum Penicillins;
- (G) Quinolones;
- (H) Sulfonamides;
- (I) Tetracyclines;
- (i) Glycylcyclines;
- (J) Antibacterials, Miscellaneous;
- (i) Aminocyclitols;
- (ii) Bacitracins;
- (iii) Cyclic Lipopeptides;
- (iv) Glycopeptides;
- (v) Lincomycins;
- (vi) Oxazolidinones;
- (vii) Polymyxins;
- (viii) Rifamycins
- (ix) Streptogramins;
- (c) Antifungals;
- (A) Allylamines;
- (B) Azoles;
- (C) Echinocandins;
- (D) Polyenes;
- (E) Pyrimidines;
- (F) Antifungals, Miscellaneous;
- (d) Antimycobacterials;
- (A) Antituberculosis Agents;
- (B) Antimycobacterials, Miscellaneous;
- (e) Antivirals;
- (A) Adamantanes;
- (B) Antiretrovirals;
- (i) HIV Fusion Inhibitors;
- (ii) HIV Protease Inhibitors;
- (iii) Integrase Inhibitors;
- (iv) Nonnucleoside Reverse Transcriptase Inhibitors;
- (v) Nucleoside and Nucleotide Reverse Transcriptase Inhibitors;
- (C) Interferons;
- (D) Monoclonal Antibodies;
- (E) Neuraminidase Inhibitors;
- (F) Nucleosides and Nucleotides;
- (G) Antivirals, Miscellaneous;
- (f) Antiprotozoals;
- (A) Amebicides;
- (B) Antimalarials;
- (C) Antiprotozoals, Miscellaneous;
- (3) Antineoplastic Agents (oral and topical only) limited to the following:
 - (a) 5FU;
 - (b) Anastrozole;
 - (c) Letrozole;
 - (d) Megestrol;
 - (e) Mercaptopurine;
 - (f) Methotrexate;
 - (g) Tamoxifen;
 - (h) Tretinoin;
 - (4) Autonomic Drugs;
 - (a) Parasympathomimetic (Cholinergic) Agents;
 - (b) Anticholinergic Agents;
 - (A) Antimuscarinics/ Antispasmodics;
 - (c) Sympathomimetic (Adrenergic) Agents;
 - (A) α -Adrenergic Agonists;
 - (B) β -Adrenergic Agonists;
 - (i) Non-selective β -Adrenergic Agonists;
 - (ii) Selective β_1 -Adrenergic Agonists;
 - (iii) Selective β_2 -Adrenergic Agonists;
 - (C) α -And β -Adrenergic Agonists;
 - (d) Sympatholytic (Adrenergic Blocking) Agents;
 - (e) Skeletal Muscle Relaxants;
 - (A) Centrally Acting Skeletal Muscle Relaxants;
 - (B) Direct-acting Skeletal Muscle Relaxants;
 - (C) GABA-derivative Skeletal Muscle Relaxants;
 - (D) Neuromuscular Blocking Agents;
 - (E) Skeletal Muscle Relaxants, Miscellaneous;
 - (f) Autonomic Drugs, Miscellaneous;
 - (5) Blood Derivatives;
 - (6) Blood Formation, Coagulation, and Thrombosis;
 - (a) Antianemia Drugs;
 - (A) Iron Preparations;
 - (b) Antithrombotic Agents;
 - (A) Anticoagulants;
 - (i) Coumarin Derivatives;
 - (ii) Direct Thrombin Inhibitors;
 - (iii) Heparins;
 - (iv) Anticoagulants, Miscellaneous;
 - (c) Platelet-reducing Agents;
 - (d) Platelet-aggregation Inhibitors;
 - (e) Thrombolytic Agents;
 - (f) Hematopoietic Agents;
 - (g) Hemorrhagic Agents;
 - (h) Antihemorrhagic Agents;
 - (A) Antiheparin Agents;
 - (B) Hemostatics;
 - (7) Cardiovascular Drugs;
 - (a) Cardiac Drugs;
 - (A) Antiarrhythmic Agents;
 - (i) Class Ia Antiarrhythmics;
 - (ii) Class Ib Antiarrhythmics;
 - (iii) Class Ic Antiarrhythmics;
 - (iv) Class III Antiarrhythmics;
 - (v) Class IV Antiarrhythmics;
 - (B) Cardiotonic Agents;
 - (C) Cardiac Drugs, Miscellaneous;
 - (b) Antilipemic Agents;
 - (A) Bile Acid Sequestrants;
 - (B) Cholesterol Absorption Inhibitors;
 - (C) Fibrin Acid Derivatives;
 - (D) HMG-CoA Reductase Inhibitors;
 - (E) Antilipemic Agents, Miscellaneous;
 - (c) Hypotensive Agents;
 - (A) Calcium-Channel Blocking Agents;
 - (B) Central α -Agonists;
 - (C) Direct Vasodilators;
 - (D) Peripheral Adrenergic Inhibitors;
 - (d) Vasodilating Agents;
 - (A) Nitrates and Nitrites;
 - (B) Phosphodiesterase Inhibitors;
 - (C) Vasodilating Agents, Miscellaneous;
 - (e) Sclerosing Agents;
 - (f) α -Adrenergic Blocking Agents;
 - (g) β -Adrenergic Blocking Agents;
 - (h) Calcium-Channel Blocking Agents;
 - (A) Dihydropyridines;
 - (B) Calcium-Channel Blocking Agents, Miscellaneous;
 - (i) Renin-Angiotensin-Aldosterone System Inhibitors;
 - (A) Angiotensin-Converting Enzyme Inhibitors;
 - (B) Angiotensin II Receptor Antagonists;
 - (C) Mineralocorticoid (Aldosterone) Receptor Antagonists;
 - (D) Renin Inhibitors;
 - (8) Central Nervous System Agents;
 - (a) Analgesics and Antipyretics;
 - (A) Nonsteroidal Anti-inflammatory Agents;
 - (i) Cyclooxygenase-2 (COX-2) Inhibitors;
 - (ii) Salicylates;
 - (iii) Other Nonsteroidal Anti-inflammatory Agents;
 - (B) Opiate Agonists;
 - (C) Opiate Partial Agonists;
 - (D) Analgesics and Antipyretics, Miscellaneous;
 - (b) Opiate Antagonists;
 - (c) Anticonvulsants, does not include Barbiturates;
 - (A) Benzodiazepines;

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- (B) Hydantoins;
 - (C) Succinimides;
 - (D) Anticonvulsants, Miscellaneous;
 - (d) Psychotherapeutic Agents;
 - (A) Antidepressants;
 - (i) Monoamine Oxidase Inhibitors;
 - (ii) Selective Serotonin- and Norepinephrine-reuptake Inhibitors;
 - (iii) Selective Serotonin- Reuptake Inhibitors;
 - (iv) Serotonin Modulators;
 - (v) Tricyclics and Other Norepinephrine-reuptake Inhibitors;
 - (vi) Antidepressants, Miscellaneous;
 - (B) Antipsychotics, to include only the following:
 - (i) Atypical antipsychotics;
 - (e) Anorexigenic Agents and Respiratory and Cerebral Stimulants;
 - (A) Amphetamines;
 - (B) Anorexigenic Agents and Respiratory and Cerebral Stimulants,
- Miscellaneous;
- (f) Anxiolytics, Sedatives, and Hypnotics, does not include
- Barbiturates;
- (A) Benzodiazepines;
 - (B) Anxiolytics, Sedatives, and Hypnotics; Miscellaneous;
 - (g) Antimanic Agents;
 - (h) Antimigraine Agents;
 - (A) Selective Serotonin Agonists;
 - (i) Antiparkinsonian Agents;
 - (A) Adamantanes;
 - (B) Anticholinergic Agents;
 - (C) Catechol-O-Methyltransferase (COMT) Inhibitors;
 - (D) Dopamine Precursors;
 - (E) Dopamine Receptor Agonists;
 - (i) Ergot-derivative Dopamine Receptor Agonists;
 - (ii) Non-ergot-derivative Dopamine Receptor Agonists;
 - (F) Monoamine Oxidase B Inhibitors;
 - (j) Central Nervous System Agents, Miscellaneous;
 - (9) Contraceptives (foams, devices);
 - (10) Diagnostic Agents;
 - (11) Disinfectants (for Agents used on objects other than skin);
 - (12) Electrolytic, Caloric, and Water Balance;
 - (a) Acidifying Agents;
 - (b) Alkalinizing Agents;
 - (c) Ammonia Detoxicants;
 - (d) Replacements Preparations;
 - (e) Ion-Removing Agents;
 - (A) Calcium-removing Agents;
 - (B) Potassium-removing Agents;
 - (C) Phosphate-removing Agents;
 - (D) Other Ion-removing Agents;
 - (f) Caloric Agents;
 - (g) Diuretics;
 - (A) Loop Diuretics;
 - (B) Osmotic Diuretics;
 - (C) Potassium-sparing Diuretics;
 - (D) Thiazide Diuretics;
 - (E) Thiazide-like Diuretics;
 - (F) Diuretics, Miscellaneous;
 - (h) Irrigation Solutions;
 - (i) Uricosuric Agents;
 - (13) Enzymes;
 - (14) Respiratory Tract Agents;
 - (a) Antihistamines;
 - (b) Antitussives;
 - (c) Anti-inflammatory Agents;
 - (A) Leukotriene Modifiers;
 - (B) Mast-cell Stabilizers;
 - (d) Expectorants;
 - (e) Pulmonary Surfactants;
 - (f) Respiratory Agents, Miscellaneous;
 - (15) Eye, Ear, Nose, and Throat (EENT) Preparations;
 - (a) Antiallergic Agents;
 - (b) Anti-infectives;
 - (A) Antibacterials;
 - (B) Antifungals;
 - (C) Antivirals;
 - (D) Anti-infectives, Miscellaneous;
 - (c) Anti-inflammatory Agents;
- (A) Corticosteroids;
 - (B) Nonsteroidal Anti-inflammatory Agents;
 - (C) Anti-inflammatory Agents, Miscellaneous;
 - (d) Local Anesthetics;
 - (e) Mydriatics;
 - (f) Mouthwashes and Gargles;
 - (g) Vasoconstrictors;
 - (h) Antiglaucoma Agents;
 - (A) α -Adrenergic Agonists;
 - (B) β -Adrenergic Agonists;
 - (C) Carbonic Anhydrase Inhibitors;
 - (D) Miotics;
 - (E) Prostaglandin Analogs;
 - (i) EENT Drugs, Miscellaneous;
 - (16) Gastrointestinal Drugs;
 - (a) Antacids and Adsorbents;
 - (b) Antidiarrhea Agents;
 - (c) Antiflatulents;
 - (d) Cathartics and Laxatives;
 - (e) Cholelitholytic Agents;
 - (f) Emetics;
 - (g) Antiemetics;
 - (A) Antihistamines;
 - (B) 5-HT₃ Receptor Antagonists;
 - (C) Antiemetics, Miscellaneous;
 - (h) Antiulcer Agents and Acid Suppressants;
 - (A) Histamine H₂-Antagonists;
 - (B) Prostaglandins;
 - (C) Protectants;
 - (D) Proton-pump Inhibitors;
 - (i) Prokinetic Agents;
 - (j) Anti-inflammatory Agents;
 - (k) GI Drugs, Miscellaneous;
 - (17) Gold Compounds;
 - (18) Heavy Metal Antagonists;
- NOTE: IV administration requires education and training compliance with 850-060-0212.
- (19) Hormones and Synthetic Substitutes;
 - (a) Adrenals;
 - (b) Androgens;
 - (c) Contraceptives;
 - (d) Estrogens and Antiestrogens;
 - (A) Estrogens;
 - (B) Estrogen Agonists-Antagonists;
 - (c) Gonadotropins;
 - (f) Antidiabetic Agents;
 - (A) α -Glucosidase Inhibitors;
 - (B) Amylinomimetics;
 - (C) Biguanides;
 - (D) Dipeptidyl Peptidase (DDP-4) Inhibitors;
 - (E) Incretin Mimetics;
 - (F) Insulins;
 - (G) Meglitinides;
 - (H) Sulfonylureas;
 - (I) Thiazolidinediones;
 - (g) Antihypoglycemic Agents;
 - (A) Glycogenolytic Agents;
 - (h) Parathyroid;
 - (i) Pituitary;
 - (j) Somatotropin Agonists and Antagonists;
 - (A) Somatotropin Agonists;
 - (B) Somatotropin Antagonists;
 - (k) Progestins;
 - (l) Thyroid and Antithyroid Agents;
 - (A) Thyroid Agents;
 - (B) Antithyroid Agents;
 - (20) Local Anesthetics;
 - (21) Oxytocics;
 - (22) Serums, Toxoids, and Vaccines;
 - (a) Serums;
 - (b) Toxoids;
 - (c) Vaccines;
 - (23) Skin and Mucous Membrane Agents;
 - (a) Anti-infectives;
 - (A) Antibacterials;
 - (B) Antivirals;

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- (C) Antifungals;
- (i) Allylamines;
- (ii) Azoles;
- (iii) Benzylamines;
- (iv) Hydroxypyridones;
- (v) Polyenes;
- (vi) Thiocarbamates;
- (vii) Antifungals, Miscellaneous;
- (D) Scabicides and Pediculicides;
- (E) Local Anti-infectives, Miscellaneous;
- (b) Anti-inflammatory Agents;
- (c) Antipruritics and Local Anesthetics;
- (d) Astringents;
- (e) Cell Stimulants and Proliferants;
- (f) Detergents;
- (g) Emollients, Demulcents, and Protectants;
- (h) Keratolytic Agents;
- (i) Keratoplastic Agents;
- (j) Depigmenting and Pigmenting Agents;
- (A) Depigmenting Agents;
- (B) Pigmenting Agents;
- (k) Sunscreen Agents;
- (l) Skin and Mucous Membrane Agents, Miscellaneous;
- (24) Smooth Muscle Relaxants;
- (a) Gastrointestinal Smooth Muscle Relaxants;
- (b) Genitourinary Smooth Muscle Relaxants;
- (c) Respiratory Smooth Muscle Relaxants;
- (25) Vitamins;
- (26) Miscellaneous Therapeutic Agents;
- (a) Alcohol Deterrents limited to the following:
- (A) Acamprostate;
- (B) Disulfiram;
- (C) Naltrexone
- (b) 5- α Reductase Inhibitors;
- (c) Antidotes;
- (d) Antigout Agents;
- (e) Biologic Response Modifiers, limited to Interferons;
- (f) Bone Resorption Inhibitors;
- (g) Cariostatic Agents;
- (h) Complement Inhibitors;
- (i) Disease-Modifying Antirheumatic Agents;
- (j) Gonadotropin-releasing Hormone Antagonists;
- (k) Immunosuppressive Agents;
- (l) Other Miscellaneous Therapeutic Agents limited to the following:
- (A) Alfuzosin Hydrochloride;
- (B) Drotrecogin Alfa (Activated);
- (C) Lanreotide Acetate;
- (D) Rilonecept;
- (E) Sapropterin Dihydrochloride;
- (F) Tamsulosin Hydrochloride.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: BNE 1-2002, f. & cert. ef. 2-19-02; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0226, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef. 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06; BNE 3-2007, f. & cert. ef. 6-12-07; BNE 1-2008, f. & cert. ef. 2-19-08; BNE 2-2008, f. & cert. ef. 3-21-08; BNE 6-2008, f. & cert. ef. 6-11-08; BNE 7-2008, f. & cert. ef. 12-8-08; BNE 2-2009, f. & cert. ef. 6-17-09; BNE 7-2009, f. 12-14-09, cert. ef. 1-1-10; OBNM 5-2010, f. & cert. ef. 6-30-10; OBNM 7-2010, f. & cert. ef. 12-13-10; OBNM 2-2011, f. & cert. ef. 4-12-11

Oregon Department of Education Chapter 581

Rule Caption: Modifies rule relating to administration of pupil transportation.

Adm. Order No.: ODE 4-2011

Filed with Sec. of State: 3-17-2011

Certified to be Effective: 3-17-11

Notice Publication Date: 1-1-2011

Rules Amended: 581-053-0002

Subject: Clarifies terminology used in regards to the administration of pupil transportation.

Rules Coordinator: Diane Roth—(503) 947-5791

581-053-0002

Administration of Pupil Transportation

(1) Purpose and applicability of Oregon Administrative Rules, Chapter 581, Division 53:

(a) The purpose of the rules set forth in this division is to ensure the safety of students in the 12th grade or lower while being transported to or from school or authorized school activities by establishing standards for vehicle construction, driver qualifications, vehicle and record inspections, and administrative provisions of pupil transportation;

(b) The rules in this division apply to all school districts and individual schools, including public, private, parochial, public charter, and alternative schools, and education service districts and head start agencies which provide transportation services to students from home to school or to authorized school activities, either through internal or contracted services.

(2) The following terms used in OAR chapter 581, division 53 shall be defined as follows:

(a) "Chargeable Accident" is an accident in which the driver is answerable as the primary cause of, or the result of, the accident;

(b) "Diabetic person" means a person who takes insulin;

(c) "Medical certificate" is defined in OAR 735-063-0060;

(d) "Pupil transporting vehicle" means a school bus or school activity vehicle;

(e) "School board" means the governing board or governing body of the transportation entity;

(f) "School activity vehicle" is defined in ORS 801.455 and includes all such vehicles that are owned, leased, or rented by a transportation entity;

(g) "School bus" is defined in ORS 801.460 and includes all such vehicles that are owned, leased, or rented by a transportation entity;

(h) "Transportation entity" means any school district or individual school to which the rules of this division apply.

(3) Transportation entities shall provide transportation in compliance with all applicable laws and administrative rules.

(4) Transportation entities or other employers shall not require or knowingly permit any person to operate a school bus or other pupil transporting vehicle in violation of any applicable rules of the State Board of Education or Oregon laws.

(5) Each school board shall adopt and implement written policies directing schools within the district to notify the district's transportation official whether students receiving transportation services from the district have special medical or behavioral protocols identified in their student records and providing that drivers shall receive appropriate training related to specified protocols, including but not limited to satisfying confidentiality requirements.

(6) Each school board shall adopt and implement a written transportation policy. A transportation policy must include provisions regarding student suspensions and expulsions from district-provided transportation services.

(a) A written transportation policy regarding student suspensions and expulsions from district-provided transportation services shall include, but is not limited to:

(A) Definitions for the terms "suspension" and "expulsion" which identify the minimum and maximum amount of time a student may be suspended or expelled from district-provided transportation services;

(B) Identification of criteria used in determining whether to suspend or expel a student from district-provided pupil transportation services; and

(C) Special provisions for the application of the policy to students receiving services under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq, ORS 339.250, and 343.533; or

(b) A written transportation policy shall include the following:

(A) Students may be suspended from district-provided pupil transportation services when such suspensions are executed within the provisions contained in OAR 581-021-0065 and all applicable procedures are consistent with 581-053-0010 and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq;

(B) The school district board shall limit the term of a suspension for a specific incident to a specific number of days. The maximum term of suspension may not exceed 10 school days when transportation is provided;

(C) Upon the occurrence within one school year of a subsequent incident or any occurrence of a severe disciplinary problem constituting a demonstrable safety hazard for the pupil-transporting vehicle or persons either inside or outside of the vehicle, the student may be expelled from district-provided transportation services for a period not to exceed one school year. An expulsion may extend into a second term or semester if the current

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term or semester ends within such a short period of time that the expulsion would be too short to be effective;

(D) In compliance with OAR 581-021-0070, a process for notifying a student's parents or guardian that the student has been suspended or expelled from district-provided transportation services, and the date on which the student may resume receiving transportation services, as well as Procedural rules for yearlong length expulsions; and

(E) Suspensions and expulsions may be ordered by the school board, the executive officer of the school district, or the executive officer's designated representative. The district school board shall have the right of final review if the school board itself does not take the action. The school board may affirm, amend, modify, or rescind any suspension or expulsion order.

(7) School buses and all other pupil transporting vehicles shall be maintained in safe operating condition and shall meet or exceed the minimum standards in effect at the time of purchase, as well as any subsequently adopted standards that are applicable to the vehicle.

(8) Any additions of vehicle equipment or alterations in the vehicle construction that are not provided for in the applicable minimum standards for Oregon school buses or school activity vehicles are prohibited without first receiving prior approval from the Oregon Department of Education.

(9)(a) Upon entry into Oregon, all pupil transportation vehicles shall conform to the Oregon minimum standards currently enforce as they apply to each vehicle, prior to transporting students.

(b) Written notification must be sent to the Oregon Department of Education when relocating pupil transportation vehicles to another transportation entity for a period exceeding 10 days.

(c) School buses with a manufacture date prior to September 1, 1998 may not be relocated.

(d) Type 20 and Type 21 school activity vehicles with a manufacture date prior to September 1, 1994 may not be relocated.

(e) Oregon Department of Education personnel may issue a written order that a vehicle is unsafe and may not be used to transport students when there is reason to believe that a deficiency is such that continued operation of the vehicle may jeopardize the safety of students or the public. The vehicle owner shall notify the Oregon Department of Education that the deficiency is corrected before transporting students.

(10) The transportation entity shall keep vehicle maintenance records for each vehicle used to transport students. These records shall be available to Oregon Department of Education personnel upon request. The following minimum information shall be kept for each vehicle by date and mileage at the time of service, adjustment or repair:

- (a) Chassis lubrications;
- (b) Engine oil and filter changes;
- (c) Major engine tune-ups and repairs;
- (d) All adjustment, service and repair of brake system;
- (e) All adjustment, service and repair of steering mechanism and other related parts;
- (f) Tires; and
- (g) Drive train components.

(11) A seat that fully supports the passenger shall be provided for every passenger on all pupil transporting vehicles. Seating is not permitted on any portion of the vehicle not designed for that purpose. Passengers shall not be permitted to stand while the vehicle is in motion.

(12) Safety instruction:

(a) All regularly transported pupils shall receive the following instruction at least once within the first six weeks of the first half of each school year and once within the first six weeks of the second half of each school year:

(A) Safe school bus riding procedures, including but not limited to loading, unloading and crossing;

(B) Use of emergency exits; and

(C) Planned and orderly evacuation of the school bus in case of emergency, including participation in actual evacuation drills.

(b) All pupils who are not regularly transported shall receive the following instruction at least once in the first half of each school year:

(A) Safe school bus riding procedures, including but not limited to loading, unloading and crossing; and

(B) Use of emergency exits.

(c) Records listing safety instruction course content and dates of training shall be maintained locally.

(13) Transportation entities shall provide for the required training, examination and testing of their school bus and school activity vehicle drivers to comply with rules promulgated by the State Board of Education. Appropriate specialized training designed for special needs transportation shall be provided prior to allowing drivers to transport students with dis-

abilities. Records to document training and testing shall be maintained by school districts. Such records shall be made part of each driver's driver-training record file. Records shall be made available to Oregon Department of Education personnel or the driver upon request.

(14) Transportation Entities or contractors employing school bus drivers or school activity vehicle drivers shall immediately notify the Oregon Department of Education if they have reason to believe any change has occurred in an employed driver's criminal or driving record that could affect the driver's ability to:

(a) Maintain a school bus driver's permit or certificate under the provisions of OAR 581-053-0006(8); or

(b) Meet the requirements listed in OAR 581-053-0545 and 581-053-0550 for activity vehicle drivers.

(15) Transportation entities or contractors selling a used school bus shall be responsible for removing all markings that would identify it as a school bus, including the bus safety lights and school bus stop arm. Except that if the school bus is sold for the purpose of:

(a) Transporting school children to and from a school, the school bus identifying markings, bus safety lights, and school bus stop arm need not be removed; or

(b) Transporting workers, the bus safety lights need not be removed.

(16) Transportation entities or contractors planning to rebuild a school bus shall first secure approval from the Pupil Transportation Section, Oregon Department of Education. (This does not apply to repair of damage.) All rebuilt school buses must meet current Oregon Minimum Standards for School Buses and applicable U.S. Department of Transportation regulations.

(17) Pupil transporting vehicles used for transportation of students with disabilities or for specific educational purposes that do not meet all current Oregon Minimum Standards for School Buses must be approved by the Pupil Transportation Section, Oregon Department of Education.

(18) Appeal for Variance:

(a) A transportation entity or contractor desiring to purchase a pupil transporting vehicle that cannot meet all required minimum construction standards for school buses or school activity vehicles as applicable in Oregon must forward an "Appeal for Variance" request to the State Superintendent of Public Instruction, Salem, Oregon. This appeal must be made by the highest ranking official with the local operation and contain at least the following information:

(A) The need for such a vehicle;

(B) Why a standard school bus or school activity vehicle will not suffice;

(C) List of items which will not meet applicable standards; and

(D) Passenger capacity of vehicle.

(b) This variance provision is designed for unique changes or alterations necessary to accommodate special equipment or conditions.

(19) In case of an accident involving serious injury or death, the transportation entity or contractor shall notify the Oregon Department of Education shall be notified immediately.

(20) A transportation entity or contractor shall notify the Oregon Department of Education in writing within 30 days of when the entity or contractor receives notification that a school bus driver employed by the entity or contractor:

(a) No longer meets the physical requirements for school bus drivers specified in OAR 581-053-0006(7);

(b) Has received a conviction for a driving violation or criminal offense specified in OAR 581-053-0006(8);

(c) Has had his or her driving privileges revoked, restricted or suspended;

(d) Fails to comply with the testing or screening requirements established by the Federal Motor Carrier Safety Administration for commercial drivers at title 49 CFR parts 382.

(21) Transportation entities shall report to the Oregon Department of Education statistics related to pupil transportation. Information required shall be related to mileage, numbers and types of school buses and numbers of students.

(22) Any person performing the annual school bus inspections required under OAR 581-053-0008 must be qualified to perform such inspections as defined under the provisions of that rule.

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 13-1978, f. 4-3-78, ef. 9-1-78; 1EB 5-1979, f. & ef. 3-30-79; EB 3-1987, f. & ef. 2-18-87; EB 43-1988, f. 12-16-88, cert. ef. 1-1-89; EB 5-1992, f. & cert. ef. 2-21-92; EB 21-1993, f. & cert. ef. 6-2-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 30-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 7-2002, f. & cert. ef. 3-11-02; ODE 1-2003(Temp), f. & cert. ef. 3-4-03 thru 8-1-03; ODE 11-2003, f. & cert. ef. 6-13-03; ODE 11-2004, f. & cert. ef. 8-4-04;

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ODE 16-2007, f. & cert. ef. 7-6-07; ODE 27-2007, f. & cert. ef. 10-26-07; ODE 4-2011, f. & cert. ef. 3-17-11

Rule Caption: Modifies rule relating to school bus driver training and certification.

Adm. Order No.: ODE 5-2011

Filed with Sec. of State: 3-17-2011

Certified to be Effective: 3-17-11

Notice Publication Date: 1-1-2011

Rules Amended: 581-053-0006

Subject: The rule amendments bring rule into alignment with state and federal law changes that take effect in January 2012 and January 2014. The changes reflect that testing and training must occur prior to the driver submitting an application. The amendments also reconnect our rule to federal regulations and clarify provisions.

Rules Coordinator: Diane Roth—(503) 947-5791

581-053-0006

School Bus Driver Training and Certification

(1)(a) No person shall transport pupils in a school bus or a vehicle that has a capacity of more than 20 passengers and not subject to regulations promulgated by the Oregon Department of Transportation or U.S. Department of Transportation, unless such person has a valid school bus driver's permit or certificate. No person shall transport pupils in a school bus of any size or type without first receiving documented instruction in its safe operation.

(b) Temporary drivers who meet all requirements listed in subsection (5) of this rule may only operate a school bus within the prescribed limitations.

(2) School Bus Driver's Permits. The Oregon Department of Education shall issue a school bus driver's permit to applicants who satisfy the permit criteria but do not qualify for a school bus driver's certificate. An applicant may not reapply for a school bus driver's permit until at least 12 months have passed since the date on which the applicant's current or previous permit expired. An applicant must meet the following criteria to qualify for a school bus driver's permit. The applicant shall:

(a) Possess a valid Commercial Driver's License (CDL) with proper endorsements for the vehicle being driven. A school bus driver's permit will not be valid for operating a vehicle of a higher-class size than that authorized by the driver's CDL;

(b) Pass an approved physical examination within six months prior to application;

(c) Pass a behind-the-wheel test as prescribed by the Oregon Department of Education within one year prior to submitting an application for a school bus driver's permit;

(d) Pass a driving and criminal records check performed by the Oregon Department of Education;

(e) File with the Oregon Department of Education an application form, provided by the Department and signed by the local employer's designated official, assuring immediate notification to the Department if the applicant's employer subsequently learns of any changes to the applicant's driving and criminal records, as listed in subsection (9) of this rule, that could affect the applicant's qualifications to hold a school bus driver's permit;

(f) Complete a minimum of fifteen hours of approved behind-the-wheel training by a trainer certified by the Oregon Department of Education within one year prior to application. Hours of behind-the-wheel training shall be those hours spent by the trainee with a certified trainer or an assistant approved by the Department in actual operation of the vehicle or vehicles the applicant will be expected to drive;

(g) Read and speak the English language sufficiently to converse with the general public, understand highway signs and traffic signals in the English language and respond to official inquiries and make entries on reports and records; and

(h) Be in compliance with controlled substances and alcohol testing requirements for commercial driver's license holders established by the Federal Motor Carrier Safety Administration at 49 CFR part 382.

(i) Exemption: Notwithstanding paragraph (f) of this subsection, if an applicant has regularly driven a bus of a size and type similar to that which the driver will be expected to drive, for a period of at least six months within the past three years, the applicant shall complete four hours of approved behind-the-wheel training. The employer must have a written acknowledgment from the applicant's previous employer verifying the applicant's prior bus-driving experience if this exception is to be exercised.

(3) School Bus Driver's Certificate. The Oregon Department of Education shall issue an original school bus driver's certificate to a qualified individual who meets the following requirements. The applicant shall:

(a) File with the Oregon Department of Education either an application for a school bus driver's certificate or a school bus driver's permit conversion card, provided by the Department, and signed by an official designated by the local employer certifying that the applicant driver:

(A) Has, within the past four years, completed the Core Course for school bus drivers offered by the Department. The course must have been taught by a certified Core instructor approved by the Oregon Department of Education;

(B) Possesses a valid first aid card verifying completion of at least the requirements of the American Red Cross first aid program or an equivalent course that is consistent with the Best Practices Guide: Fundamentals of a Workplace First-Aid Program (OSHA 3317-2006), published by the Occupational Safety and Health Administration, U.S. Department of Labor. A driver shall maintain a valid first aid card at all times;

(C) Demonstrates the knowledge and ability to perform the duties of a school bus driver;

(D) Has, to the best of the local employer's knowledge, not been convicted of any driving or criminal offense listed in subsection (9) of this rule that could prevent certification; and

(E) Has a training record on file with the local employer meeting the requirements of the certificate being requested.

(b) Possess a valid school bus driver's permit; or

(c) Satisfy the following requirements. The driver shall:

(A) Possess a valid Commercial Driver's License (CDL) with the proper endorsements for the vehicle being driven. A school bus driver's certificate will not be valid for operating a vehicle of a higher-class size than that authorized by the driver's CDL;

(B) Pass an approved physical examination within six months prior to submitting an application;

(C) Pass a behind-the-wheel test as prescribed by the Oregon Department of Education within one year prior to submitting an application for a school bus driver's certificate;

(D) Pass a driving and criminal records check performed by the Oregon Department of Education;

(E) Complete a minimum of fifteen hours of approved behind-the-wheel training by a trainer certified by the Oregon Department of Education within one year prior to application. Hours of behind-the-wheel training shall be those hours spent by the trainee with a certified trainer or an assistant approved by the Department in actual operation of the vehicle or vehicles the applicant will be expected to drive;

(F) Read and speak the English language sufficiently to converse with the general public, understand highway signs and traffic signals in the English language, and respond to official inquiries and make entries on reports and records; and

(G) Be in compliance with controlled substances and alcohol testing requirements for commercial driver's license holders established by the Federal Motor Carrier Safety Administration at 49 CFR part 382. .

(H) Exemption: Notwithstanding subparagraph (E) of this paragraph, if an applicant has regularly driven a bus of a size and type similar to that which the driver will be expected to drive, for a period of at least six months within the past three years, the applicant shall be required to complete four hours of approved behind-the-wheel training. The employer must have written acknowledgment from the applicant's previous employer verifying bus-driving experience if this exception is to be exercised.

(4) Certificate Renewal. The Oregon Department of Education shall renew a school bus driver's certificate of a driver who:

(a) Possesses, or has possessed within the last 12 month period, a valid school bus driver's certificate issued by the Department;

(b) Possesses a valid Commercial Driver's License (CDL) with proper endorsements for the type of vehicle being driven. The certificate will not be valid for operating a vehicle of a higher-class size than that authorized by the driver's CDL;

(c) Has passed an approved physical examination within six months prior to application;

(d) Has passed a driving and criminal records check performed by the Oregon Department of Education;

(e) Has filed with the Oregon Department of Education an application, provided by the Department, signed by an official designated by the local employer certifying that the driver:

(A) Has completed a Core or Core Refresher Course for school bus drivers, taught by a Core or Core Refresher instructor certified by the Oregon Department of Education, within the last four years;

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(B) Possesses a valid first aid card verifying completion of at least the requirements of the American Red Cross first aid program or an equivalent course that is consistent with the Best Practices Guide: Fundamentals of a Workplace First-Aid Program (OSHA 3317-2006), published by the Occupational Safety and Health Administration, U.S. Department of Labor. A driver shall maintain a valid first aid card at all times;

(C) Has completed classroom training averaging at least eight hours annually, while certified as a school bus driver during the preceding four-year period. Classroom training must be approved by the Oregon Department of Education to qualify.

(D) Is able to satisfactorily perform the duties of a school bus driver;

(E) Has, to the best of the local employer's knowledge, not been convicted of any driving or criminal offense listed in subsection (9) of this rule that could prevent the driver's recertification;

(F) Is in compliance with the controlled substances and alcohol testing requirements for commercial driver's license holders established by the Federal Motor Carrier Safety Administration at 49 CFR part 382; and

(G) Has a training record on file with the driver's local employer that meets the requirements of the certificate being requested;

(f) Additional tests may be required by the Oregon Department of Education if reasonable doubt of driver competency exists or as required by rule.

(5) Temporary Driver. A person who does not currently possess a valid school bus driver's certificate or permit may serve as a temporary driver. Temporary drivers may not drive for more than ten days in a single school year, except that a temporary driver may drive for more than ten days in a single school year with written permission from the Oregon Department of Education. A driver may serve as a temporary driver if the driver:

(a) Is judged competent by the local school authorities;

(b) Possesses a valid Commercial Driver's License (CDL) with proper endorsements for the vehicle being driven;

(c) Possesses a valid medical certificate; and

(d) Is on a list of approved temporary drivers maintained by the Oregon Department of Education. A temporary driver must pass the same check of driving and criminal records as required for a holder of a school bus driver's certificate. The temporary driver must meet all qualifications prescribed on the temporary driver application. This form must be signed by an authorized official of the school district and submitted to the Department for approval. Approval as a temporary driver shall expire on July 1 annually.

(6) Expiration:

(a) School bus driver's permits expire 120 days after issuance, or on the date of medical certificate expiration, whichever occurs first. Permits may not be renewed. The holder of a valid permit may apply for a school bus driver's certificate, provided that all requirements have been met for such certificate.

(b) School bus drivers' certificates shall expire two years from the date of the physical examination required in subsection (8) of this rule, except:

(A) Certificates for applicants 55 years of age and older shall expire one year from the date of physical examination required in subsection (8) of this rule;

(B) Certificates for applicants who are diabetic shall expire one year from the date of the physical examination required in subsection (8) of this rule; and

(C) Certificates for applicants who have had a physical examination as required in subsection (8) of this rule and have been issued a medical certificate with an expiration date that is prior to the expiration dates outlined in this subsection shall expire on the date the medical certificate expires.

(7) Age Restrictions: To obtain an original school bus driver's certificate or permit, or to renew a school bus driver's certificate following a person's 70th birthday, an applicant must comply with all certification requirements and successfully complete an Oregon Department of Education behind-the-wheel test no more than 30 days before the date of application. The test must be administered by a behind-the-wheel trainer currently certified by the Department. A copy of the test shall be attached to the application form.

(8) Physical Examinations:

(a) An applicant for a school bus driver's permit or certificate, or renewal of a school bus driver's certificate must have passed a physical examination approved by the Oregon Department of Education and administered within six months prior to the date of application by a physician or physician assistant licensed under ORS chapter 677, a nurse practitioner certified under ORS 678.375 or a Chiropractic physician licensed under

ORS chapter 684. Physicians completing the required Oregon Department of Education forms for diabetic persons must be a board certified endocrinologist, board certified diabetologist, board certified family practitioner or board certified internist.

(b) A cardiac stress test shall be required with certificate application given any evidence of myocardial infarction within the past three months or unstable angina pectoris. The examining physician may also require a resting electrocardiogram (ECG) or other testing as determined appropriate related to coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse or congestive heart failure.

(c) Physical examination and certificate application forms adopted by the Oregon Department of Education shall be utilized by applicants for a school bus driver's certificate or permit.

(d) An applicant is physically qualified to drive a school bus if the applicant:

(A) Has no impairment in the use of the driver's foot, leg, finger, hand or arm or other structural defect or limitation likely to interfere with the driver's ability to perform tasks associated with operating a school bus. Drivers may be required to demonstrate their ability to:

(i) Utilize a manually operated bus entrance door control with a force of at least 30 pounds;

(ii) Ascend and descend steps with a maximum step height of 17 1/2 inches;

(iii) Operate two hand controls simultaneously and quickly;

(iv) Have a reaction time of 3/4 of a second or less from the throttle to the brake control;

(v) Carry or drag a 125 pound person 30 feet in 30 seconds or less;

(vi) Depress a brake pedal with the foot to a pressure of at least 90 pounds;

(vii) Depress a clutch pedal with the foot to a pressure of at least 40 pounds unless operating an automatic transmission; and

(viii) Exit from an emergency door opening of 24 x 48 inches at least 42 inches from the ground in ten seconds or less.

(B) Is physically able to open all emergency exits installed in any school bus they drive; and

(C) Has no mental, nervous, organic or functional disease or disability likely to interfere with safe driving or other responsibilities of a school bus driver.

(D) Has visual acuity of at least 20/40 (Snellen) in each eye either with or without corrective lenses and a binocular acuity of at least 20/40 (Snellen) in both eyes either with or without corrective lenses. Form field of vision shall not be less than a total of 140 degrees and the ability to distinguish colors red, green and yellow. Drivers requiring corrective lenses shall wear properly prescribed lenses at all times while driving.

(E) Perceives a forced whispered voice in the better ear not less than five feet with or without the use of a hearing aid, or if tested by the use of an audiometric device, the applicant shall not have average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard Z24.5-1951. Drivers requiring a hearing aid shall wear a properly operating hearing aid at all times while driving.

(F) Does not use a controlled substance identified in 21 CFR 1308.11 Schedule 1, an amphetamine, a narcotic, or any other habit-forming drug.

(i) Exception: Notwithstanding (i) of this subparagraph, a driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who:

(I) Is familiar with the driver's medical history and assigned duties; and

(II) Has advised the driver that the prescribed controlled substance or drug will not adversely affect the driver's ability to safely perform the duties of a school bus driver.

(G) Has no current clinical diagnosis of alcoholism.

(H) Has not had a loss of consciousness or loss of control (cognitive function) due to a diabetic event within the preceding one year period, provided there has not been a recurrent hypoglycemic reaction requiring assistance of another person within the previous five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia.

(I) Does not have a diabetic condition; Applicants with a diabetic condition may be physically qualified provided they comply with all of the following requirements. Drivers shall:

(i) Self-monitor their blood glucose and demonstrate a blood glucose level of more than 100mg/dl and less than 300 mg/dl, using a device approved by the Food and Drug Administration, U.S. Department of Health

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and Human Services, within one hour before driving pupil transporting vehicles and approximately every four hours while on duty;

(ii) Report immediately to their employer, any failure to comply with specific glucose level requirements as listed in subparagraph (I)(i) and (v) of this paragraph, or loss of consciousness or control;

(iii) Maintain a daily log of all blood glucose test results for the previous six month period and provide copies to their employer, the examining physician and the Oregon Department of Education, upon request;

(iv) Carry a source of readily absorbable, fast-acting glucose while on duty;

(v) Undergo and submit physician-signed results of a glycated hemoglobin (HbA1c) test indicating glucose levels of more than 5.9 percent and less than 9.6 percent to their employer for transmission to the Oregon Department of Education every six months;

(vi) Undergo and submit the results of an annual examination to detect any peripheral neuropathy, unstable diabetic retinopathy or clinically significant eye disease that prevents the individual from meeting current vision standards included in this rule, or circulatory insufficiency;

(vii) Provide a signed statement by the examining physician indicating that within the past three years the driver has completed instruction to address diabetes management and driving safety, to identify signs and symptoms of hypoglycemia and hyperglycemia, and what procedures must be followed if complications from diabetes arise;

(viii) Submit all required Oregon Department of Education forms signed by the appropriate medical professionals within the prescribed timelines;

(J) Does not have severe hypertension (grade 3 retinopathy); or

(K) Does not have an established medical history or clinical diagnosis of epilepsy or any other condition likely to cause loss of consciousness or any loss of ability to control a motor vehicle.

(e) A driver is no longer physically qualified to operate a school bus and shall be immediately removed from duty for the following:

(A) Diabetic person:

(i) Results of an HbA1c test indicating values less than 6.0 or greater than 9.5 unless accompanied by the required medical opinion that the event was incidental and not an indication of failure to control glucose levels;

(ii) Results of self-monitoring indicate glucose levels less than 100 mg/dl or greater than 300 mg/dl, until self-monitoring indicates compliance with specifications;

(iii) Experiencing a loss of consciousness or control relating to a diabetic condition; or

(iv) Failing to maintain or falsifying the required medical records.

(B) A new diagnosis of diabetes requiring insulin until all requirements under subsection (8)(d)(I) have been met;

(C) Notwithstanding paragraphs (A) and (B), if the driver has a serious illness, injury, or change in physical or mental condition and no longer meets the physical requirements outlined in subsection (8)(d), then re-examination and medical approval are required before the driver may resume driving a school bus.

(9) Driving and Criminal Records:

(a) The Oregon Department of Education shall review the driving record of each applicant before a school bus driver's permit or certificate is issued or renewed. Applicants who have held a driver's license in a state other than Oregon anytime during the preceding three-year period shall furnish a copy of the driving record from each state in which the applicant has held a driver's license to the Department printed within 30 days prior to the application;

(b) The Oregon Department of Education shall review the criminal record of a driver upon application for a school bus driver's permit or certificate, or renewal of a school bus driver's permit or certificate;

(c) An applicant shall be refused a school bus driver's certificate, permit or a current certificate or permit shall be suspended or revoked if the applicant or driver:

(A) Has ever been convicted of crime listed in ORS 342.143;

(B) Has ever been convicted of a crime involving violence, the threat of violence or theft. This shall not apply if applicant or driver has been free from custody, probation and parole for the preceding three-year period from date of application;

(C) Has ever been convicted of a crime involving activity in drugs or alcoholic beverages. This shall not apply if the applicant or driver has been free from custody, probation, and parole for the preceding three-year period from date of application;

(D) Has had a driver's license suspended by the Division of Motor Vehicles of any state, within the preceding three year period, for a cause

involving the unsafe operation of a motor vehicle or because of driving record;

(E) Has been convicted within the preceding three-year period of:

(i) Driving under the influence of intoxicants, as defined in ORS 813.010;

(ii) Reckless driving, as defined in ORS 811.140;

(iii) Fleeing or attempting to elude a police officer, as defined in under ORS 811.540;

(iv) Failure to perform the duties of a driver involved in an accident or collision which results in injury or death of any person, as described in ORS 811.705, or equivalent out of state conviction.

(F) Has had his or her driving privileges revoked or suspended as a habitual offender under ORS 809.600. This shall not apply if applicant or driver has had his or her driving privileges restored under ORS 809.660 for the preceding three years;

(G) Has a driving record for the preceding three-year period that has an accumulation of 31 or more points based upon the following point system:

(i) Each chargeable accident shall have a value of 10 points.

Applicable traffic code and preventability guidelines published by the National Safety Council and the Pupil Transportation Safety Institute may be used to determine if an accident is chargeable; and

(ii) Each of the traffic violations on Table 1 shall have a value of 10 points.

(iii) One point shall be subtracted from the total number of points for each full month, since the last chargeable accident or conviction, to the time of driving record check; however, all subtracted points will be reinstated if any additional qualifying convictions or chargeable accidents occur within the three-year calculation period.

(10) Refusals and Suspensions:

(a) The Oregon Department of Education may refuse, suspend or revoke the certificate of a school bus driver for:

(A) Noncompliance with certification or physical requirements;

(B) A positive drug or alcohol test, verified by a medical review officer, as part of drug and alcohol testing required by the Federal Motor Carrier Safety Regulations;

(C) Giving false information on application forms; or

(D) Failure to comply with laws, rules and regulations applicable to school bus drivers;

(b) The Oregon Department of Education shall suspend the driver's school bus driver certificate or permit immediately upon the receipt of appropriate documentation indicating that driver's failure to comply with any regulations identified in subsection (8) (d)(I) related to persons with diabetes;

(c) A driver shall, upon suspension or revocation of the driver's school bus driver's certificate or permit, surrender the suspended or revoked certificate or permit to the Oregon Department of Education;

(d) A driver whose school bus driver's certificate or permit was suspended or revoked, or application for a certificate or permit was rejected, may request a hearing. Hearings conducted under this paragraph on appeal for refusal, suspension or revocation of a school bus driver's certificate or permit shall be conducted pursuant to ORS chapter 183;

(e) A certificate may be suspended for any period of time not to exceed 90 days. If the conditions of a certificate's suspension have not been met within the suspension period, the certificate shall be revoked.

(f) The Oregon Department of Education may reinstate a school bus driver's certificate or permit if:

(A) The driver can demonstrate compliance with the certificate and physical requirements;

(B) The driver can provide documentation that he or she has completed all return-to-duty requirements after a positive drug or alcohol test required by the Federal Motor Carrier Safety Administration and documentation from the employer that the employer is ensuring that the driver meets these requirements; and

(C) The driver can provide satisfactory evidence that he or she is in compliance with laws, rules and regulations applicable to school bus driver

(g) The Oregon Department of Education may reinstate a school bus driver's certificate or permit if a driver suspended for violating subsection (8)(d)(I), regarding regulations related to diabetes, provides or demonstrates that the driver has:

(A) Submitted an application for reinstatement with department form 581-2278-e; and

(B) Provided copies of blood sugar records for the three months immediately preceding the date of the driver's reinstatement application indicating stable blood sugars as certified by qualifying physician. The

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blood sugar records must include a copy of any conforming HbA1c test results for this period;

(h) The Department may reinstate a driver's school bus driver's certificate or permit if the driver's certificate or permit was suspended because the driver experienced a loss of consciousness or loss of control due to a diabetic related episode. A driver may apply for reinstatement under the guidelines at subsection (8)(d)(H) of this rule.

(i) Drivers who have had their school bus driver's certificates or permits revoked for falsification of records may not apply for reinstatement for a period of 3 years from the date on which their certificate or permit was suspended or revoked.;

(11) Change of Name, Address or Employer. A driver shall notify the Oregon Department of Education, in writing, of any change in the driver's name, address or employer within 30 days of the change. A duplicate certificate will be issued if necessary.

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

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105 & 820.110 - 820.120

Hist.: 1EB 19-1978, f. 6-19-78, ef. 7-1-78; 1EB 32-1978, f. & ef. 9-5-78; 1EB 4-1979, f. 3-30-79, ef. 7-1-79; 1EB 8-1981, f. & ef. 4-1-81; 1EB 13-1981(Temp), f. & ef. 7-29-81; 1EB 7-1982, f. & ef. 2-18-82; EB 3-1987, f. & ef. 2-18-87; EB 43-1988, f. 12-16-88, cert. ef. 1-1-89; EB 25-1993, f. & cert. ef. 7-30-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 30-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 14-2001(Temp) f. & cert. ef. 6-15-01 thru 12-1-01; ODE 8-2002, f. & cert. ef. 3-11-02; ODE 12-2004, f. & cert. ef. 8-4-04; ODE 5-2011, f. & cert. ef. 3-17-11

Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

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

Adm. Order No.: DMAP 3-2011

Filed with Sec. of State: 3-23-2011

Certified to be Effective: 3-25-11

Notice Publication Date: 2-1-2011

Rules Amended: 410-122-0080, 410-122-0180, 410-129-0220

Rules Repealed: 410-122-0080(T), 410-122-0180(T), 410-129-0220(T)

Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies Services Program and the Speech-language pathology, Audiology and Hearing Aid Services Program administrative rules govern the Division's payment for services to certain clients. Having temporarily amended rules listed above, the Division **permanently amended** the rules to provide clarity of coverage, ensure client safety, and ensure medically appropriate devices are provided. These amendments 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.

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

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0080

Conditions of Coverage, Limitations, Restrictions and Exclusions

(1) The Division of Medical Assistance Programs (Division) may pay for durable medical equipment, prosthetics, orthotics and medical supplies (DMEPOS) when the item meets all the criteria in this rule, including all of the following conditions. The item:

(a) Has been approved for marketing and registered or listed as a medical device by the Food and Drug Administration (FDA) and is otherwise generally considered to be safe and effective for the purpose intended. In the event of delay in FDA approval and registration, the Division will review purchase options on a case by case basis;

(b) Is reasonable and medically appropriate for the individual client;

(c) Is primarily and customarily used to serve a medical purpose;

(d) Is generally not useful to a person in the absence of illness or injury;

(e) Is appropriate for use in a client's home;

(f) Specifically, for durable medical equipment, can withstand repeated use; i.e., could normally be rented, and used by successive clients;

(g) Meets the coverage criteria as specified in this division and subject to service limitations of the Division rules;

(h) Is requested in relation to a diagnosis and treatment pair that is above the funding line on the Oregon Health Services Commission's Prioritized List of Health Services (Prioritized List of Health Services or List) found in OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500; and

(i) Is included in the Oregon Health Plan (OHP) client's benefit package of covered services.

(2) Conditions for Medicare-Medicaid Services:

(a) If Medicare is the primary payer and Medicare denies payment, an appeal to Medicare must be filed timely prior to submitting the claim to the Division for payment. If Medicare denies payment based on failure to submit a timely appeal, the Division may reduce any amount the Division determines could have been paid by Medicare;

(b) If Medicare denies payment on appeal, the Division will apply DMEPOS coverage criteria in this rule to determine whether the item or service is covered under the OHP.

(3) The Division will not cover DMEPOS items when the item or the use of the item is:

(a) Not primarily medical in nature;

(b) For personal comfort or convenience of client or caregiver;

(c) A self-help device;

(d) Not therapeutic or diagnostic in nature;

(e) Used for precautionary reasons (e.g., pressure-reducing support surface for prevention of decubitus ulcers);

(f) Inappropriate for client use in the home (e.g., institutional equipment like an oscillating bed);

(g) For a purpose where the medical effectiveness is not supported by evidence-based clinical practice guidelines; or

(h) Reimbursed as part of the all-inclusive rate in a nursing facility, or as part of a home and community based care waiver service, or by any other public, community or third party resource.

(4) In addition to the particular requirements in this rule, particular coverage criteria, limitations and restrictions for durable medical equipment, prosthetics, orthotics and supplies are specified in the appropriate rule. To the extent that codes are identified in these rules or in fee schedules, the codes are provided as a mechanism to facilitate payment for covered items and supplies consistent with OAR 410-122-0186, but codes do not determine coverage. If prior authorization is required, the request must document that prior authorization was obtained in compliance with the rules in this division.

(5) DMEPOS providers must have documentation on file that supports coverage criteria are met.

(6) Billing records must demonstrate that the provider has not exceeded any limitations and restrictions in rule. The Division may require additional claim information from the provider consistent with program integrity review processes.

(7) Documentation described in (4), (5) and (6) above must be made available to the Division on request.

(8) To identify non-covered items at a code level, providers can refer to the Division fee schedule, subject to the limitation that fee schedules and codes do not determine coverage, and are solely provided as a mechanism to facilitate payment for covered services and supplies consistent with OAR 410-122-0186. If an item or supply is not covered for an OHP client in accordance with these rules, there is no basis for payment regardless of whether there is a code for the item or supply on the fee schedule.

(9) Some benefit packages do not cover equipment and supplies (see OAR 410-120-1210 Medical Assistance Benefit Packages and Delivery System).

(10) Buy-ups are prohibited. Advanced Beneficiary Notices (ABN) constitutes a buy-up and are prohibited. Refer to the Division General Rules (chapter 410, division 120) for specific language on buy-ups.

(11) Equipment purchased by the Division for a client is the property of the client.

(12) Rental charges, starting with the initial date of service, regardless of payer, apply to the purchase price.

(13) A provider who supplies rented equipment is to continue furnishing the same item throughout the entire rental period, except under documented reasonable circumstances.

(14) Before renting, providers should consider purchase for long-term requirements.

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(15) The Division will not pay DMEPOS providers for medical supplies separately while a client is under a home health plan of care and covered home health care services.

(16) The Division will not pay DMEPOS providers for medical supplies separately while a client is under a hospice plan of care where the supplies are included as part of the written plan of care and for which payment may otherwise be made by Medicare, the Division or other carrier.

(17) Separate payment will not be made to DMEPOS providers for equipment and medical supplies provided to a client in their home when the cost of such items is already included in the capitated (per diem) rate paid to a facility or organization.

(18) Non-contiguous out-of-state DMEPOS providers may seek Medicaid payment only under the following circumstances:

(a) Medicare/Medicaid clients:

(A) For Medicare covered services and then only Medicaid payment of a client's Medicare cost sharing expenses for DMEPOS services when all of the following criteria are met:

(i) Client is a qualified Medicare beneficiary;

(ii) Service is covered by Medicare;

(iii) Medicare has paid on the specific code. Prior authorization is not required;

(B) Services not covered by Medicare:

(i) Only when the service or item is not available in the State of Oregon and this is clearly substantiated by supporting documentation from the prescribing practitioner and maintained in the DMEPOS provider's records;

(ii) Some examples of services not reimbursable to a non-contiguous out of-state provider are incontinence supplies, grab bars, etc. This list is not all-inclusive;

(iii) Services billed must be covered under the OHP;

(iv) Services provided and billed to the Division must be in accordance with all applicable Division rules;

(b) Medicaid-only clients:

(A) For a specific Oregon Medicaid client who is temporarily outside Oregon or the contiguous borders of Oregon and only when the prescribing practitioner has documented that a delay in service may cause client harm;

(B) For foster care or subsidized adoption children placed out of state;

(C) Only when the service or item is not available in the State of Oregon and this is clearly substantiated by supporting documentation from the prescribing practitioner and maintained in the DMEPOS provider's records;

(D) Services billed must be covered under the OHP;

(E) Services provided and billed to the Division must be in accordance with all applicable DMAP rules.

(19) The items listed in Table 122-0080 generally do not meet the requirements under DMEPOS rules for purchase, rent or repair of equipment or items. A request for equipment or an item on this list will not be granted.

(20) See General Rules OAR 410-120-1200 Excluded Services and Limitations for more information on general scope of coverage and limitations.

(21) Table 122-0080, Exclusions. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 413.042 & 414.065

Hist.: AFS 3-1982, f. 1-20-82, ef. 2-1-82; AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 24-1990(Temp), f. & cert. ef. 7-27-90; HR 6-1991, f. & cert. ef. 1-18-91, Renumbered from 461-024-0020; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 13-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 26-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 28-2010(Temp), f. & cert. ef. 10-7-10 thru 3-25-11; DMAP 29-2010(Temp), f. & cert. ef. 10-13-10 thru 3-25-11; DMAP 3-2011, f. 3-23-11, cert. ef. 3-25-11

410-122-0180

Healthcare Common Procedure Coding System Level II Coding

(1) The Healthcare Common Procedure Coding System (HCPCS) level II is a comprehensive and standardized system that classifies similar products that are medical in nature into categories for the purpose of efficient claims processing. For each alphanumeric HCPCS code, there is descriptive terminology that identifies a category of like items. These codes

are used primarily for billing purposes. The Centers for Medicare and Medicaid Services (CMS) maintain and distribute HCPCS Level II Codes.

(2) HCPCS is a system for identifying items and services. It is not a methodology or system for making coverage or payment determinations. The existence of a code does not, of itself, determine coverage for an item or service. While these codes are used for billing purposes, decisions regarding the addition, deletion, or revision of HCPCS codes are made independently of the process for making coverage and payment determinations for medical items or services. Items billed that do not have a HCPCS code will be reviewed by the Division of Medical Assistance Programs (Division) on a case by case basis to ensure rule 410-122-0080 is appropriately applied to item billed.

(3) The Division uses the HCPCS Level II Code Set to ensure that claims are processed in an orderly and consistent manner.

(4) When requesting authorization and submitting claims, DMEPOS providers must use these codes to identify the items they are billing. The descriptor that is assigned to a code represents the definition of the items and services that can be billed using that code.

(5) This rule division may not contain all code updates needed to report medical services and supplies.

(6) For the most up-to-date information on code additions, changes, or deletions, refer to the fee schedule posted on the Division Web site.

(7) The Division fee schedule lists all of the current HCPCS codes in an alphanumeric index.

(8) Newly established temporary codes and effective dates for their use are also posted on the Division website at www.oregon.gov/DHS/healthplan/data_pubs/feeschedule/main.shtml.

(9) CMS updates permanent national codes annually on January 1st.

(10) CMS may add, change, or delete temporary national codes on a quarterly basis.

(11) The Medicare Pricing, Data Analysis and Coding (PDAC) contractor is responsible for assisting DMEPOS providers and manufacturers in determining which HCPCS code should be used to describe DMEPOS items.

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

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 413.042 & 414.065

Hist.: AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 7-1990, f. 3-30-89, cert. ef. 4-1-89, Renumbered from 461-024-0200; HR 13-1991, f. & cert. ef. 3-1-91, Renumbered from 410-122-0100; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 12-1999(Temp), f. & cert. ef. 4-1-99 thru 9-1-99; OMAP 26-1999, f. & cert. ef. 6-4-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 54-2001(Temp), f. 10-31-01, cert. ef. 11-1-01 thru 4-15-02; OMAP 63-2001, f. 12-28-01, cert. ef. 1-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 26-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 3-2011, f. 3-23-11, cert. ef. 3-25-11

410-129-0220

Augmentative Communications System or Device

(1) Augmentative Communications System or Device and the necessary attachment equipment to bed or wheelchair are a covered benefit of the Division of Medical Assistance Programs (Division).

(2) The requested system or device must be approved, registered or listed as a medical device with the Food and Drug Administration.

(3) Criteria for coverage: Providers must meet each of the following components and submit documentation to the Division with the prior authorization request for review:

(a) A physician's statement of diagnosis and medical prognosis (not a prescription for an augmentative device) documenting the inability to use speech for effective communication as a result of the diagnosis;

(b) The client must have reliable cognitive ability and a consistent motor response to communicate that can be measured by standardized or observational tools:

(A) Object permanence — ability to remember objects and realize they exist when they are not seen; and

(B) Means end — ability to anticipate events independent of those currently in progress — the ability to associate certain behaviors with actions that will follow;

(c) The client must be assessed by a Speech Pathologist and when appropriate an Occupational Therapist and/or Physical Therapist. The evaluation report(s) must include:

(A) A completed DMAP 3047 form: Augmentative Communication Device Selection Report Summary (page 1) and required elements of the Formal Augmentative/Alternative Communication Evaluation (page 2). Attach additional pages required to complete information requested;

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(B) An explanation of why this particular device is best suited for this client and why the device is the lowest level that will meet basic functional communication needs;

(C) Evidence of a documented trial of the selected device and a report on the client's success in using this device; and

(D) A therapy treatment plan with the identification of the individual responsible to program the device, monitor and reevaluate on a periodic basis;

(d) Providers send requests for augmentative communications systems or devices to the Division; and

(e) The manufacturer's MSRP and the vendor's acquisition cost quotations for the device must accompany each request including where the device is to be shipped.

(4) The Division shall reimburse for the lowest level of service that meets the medical need.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.065

Hist.: HR 40-1990(Temp), f. & cert. ef. 11-15-90; HR 5-1991, f. 1-18-91, cert. ef. 2-1-91; HR 11-1992, f. & cert. ef. 4-1-92; HR 36-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 36-1999, f. & cert. ef. 10-1-99; OMAP 38-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 59-2003, f. 9-5-03, cert. ef. 10-1-03; DMAP 26-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 3-2011, f. 3-23-11, cert. ef. 3-25-11

Rule Caption: April 2011 Technical changes to the January 1, 2011–December 31, 2012 Health Services Commission's Prioritized List of Health Services.

Adm. Order No.: DMAP 4-2011

Filed with Sec. of State: 3-23-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 3-1-2011

Rules Amended: 410-141-0520

Subject: The Oregon Health Plan (OHP or Managed Care) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP permanently amended 410-141-0520 to reference the January 1, 2010–December 31, 2011 Health Services Commission's Prioritized List with interim modifications and technical changes effective April 1, 2010, including application of 2009 national code to the HSC lines and HSC guideline refinements.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0520

Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of preventive services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website: www.oregon.gov/DHS/healthplan/priorlist/main, or, for a hardcopy contact the Office for Oregon Health Policy and Research. This rule incorporates to reference the CMS approved biennial January 1, 2011–December 31, 2012 Prioritized List, including interim modifications and technical revisions made for the 2009 national code set effective April 1, 2011 that includes expanded definitions, practice guidelines and condition treatment pairs funded through line 502.

(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, 413.042 & 414.065

Stats. Implemented: ORS 192.527, 192.528, 414.065 & 414.727

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-04; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp),

f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f. & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09 ef. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10; 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; DMAP 4-2011, f. 3-23-11, cert. ef. 4-1-11

Rule Caption: CAREAssist rules and provider payments.

Adm. Order No.: DMAP 5-2011

Filed with Sec. of State: 3-29-2011

Certified to be Effective: 3-29-11

Notice Publication Date: 3-1-2011

Rules Ren. & Amend: 333-012-0250 to 410-121-3000

Subject: The Oregon Health Authority is permanently amending OAR 333-012-0250 and renumbering it to OAR 410-121-3000 pertaining to the AIDS Drugs Assistance Program (ADAP) or CARE-Assist. The rule is being amended to include a section regarding provider and pharmacy payments. The rule is being renumbered from chapter 333 (Public Health Division) to chapter 410 (Division of Medical Assistance Programs) so that all pharmacy rules (Medicaid and non-Medicaid) for the Oregon Health Authority are found in the same location.

Rules Coordinator: Brittany Sande—(917) 673-1291

410-121-3000

AIDS Drug Assistance Program

(1) Purpose. The AIDS Drug Assistance Program (ADAP) provides medications for the treatment of HIV disease. The program is primarily funded through Part B of the Ryan White Treatment Modernization Act, which provides grants to states and territories. The Oregon Health Authority shall administer the federal funds awarded under Part B of the Ryan White Treatment Modernization Act for the State of Oregon.

(2) Services. Program funds may be used to provide access to medication, purchase health insurance for eligible clients and services that enhance access, adherence, and monitoring of drug treatments.

(3) Eligibility. Individuals must provide documentation of a HIV diagnosis and meet income and resource guidelines as set by the Oregon Health Authority and other criteria as defined in the Ryan White Treatment Modernization Act.

(4) This program shall be in effect as long as authorized funds are available.

(5) Provider Payments: CAREAssist will make payments to providers for medical services provided to CAREAssist and Bridge clients to the extent funds are available. Payments made by CAREAssist on behalf of its clients must be accepted by the provider as full payment for the services provided.

(a) CAREAssist as the last payer: Before a provider bills CAREAssist for medical services provided to CAREAssist clients, all other insurance(s) for which the client is eligible must be billed by the provider. Only the uncompensated balance, which is the portion the clients must pay, is eligible for payment under this rule.

(b) CAREAssist as the primary payer: If a CAREAssist client has no insurance or when these services are not covered due to a pre-existing exclusion imposed by insurance, CAREAssist will pay for out-patient service CPT codes. When CAREAssist acts as the primary provider, CAREAssist will pay providers at 125 percent of the Oregon Division of Medical Assistance Programs (Medicaid) reimbursement rate. A current fee schedule for the Oregon Division of Medical Assistance Programs can be found at http://www.oregon.gov/DHS/healthplan/data_pubs/feeschedule/downloads.shtml.

(c) For Bridge clients: For purposes of this rule, Bridge client refers to anyone enrolled in the Bridge program which provides temporary financial assistance to individuals for accessing HIV treatment while applying for long term medical insurance. CAREAssist will reimburse providers at

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125 percent of the Oregon Division of Medical Assistance Programs (Medicaid) rate for a limited number of service CPT codes. A list of covered service codes available to Bridge clients can be found at www.oregon.gov/OHA/pharmacy/careassist/docs/bridgecodes.pdf

(6) Pharmacy Payments: The program will reimburse pharmacies on all full pay medications at [Average Wholesale Price (AWP) – 15%] + \$3.50 for both single-source generics and brand drugs and [AWP – 60%] + \$3.50 for generic drugs.

(7) The Oregon Health Authority will periodically re-evaluate the program in order to fully utilize the funds available.

Stat. Auth.: ORS 431.830

Stats. Implemented: ORS 431.830

Hist.: HD 14-1987(Temp), f. & ef. 9-30-87; HD 9-1988, f. 5-11-88, cert. ef. 5-12-88; HD 1-1990(Temp), f. & cert. ef. 1-8-90; PH 9-2005, f. 6-15-05, cert. ef. 6-21-05; PH 25-2010(Temp), f. & cert. ef. 10-1-10 thru 3-29-11; Renumbered from 333-012-0250 by DMAP 5-2011, f. & cert. ef. 3-29-11

Oregon Health Licensing Agency Chapter 331

Rule Caption: Investigatory appearances before the agency and active military status protocols for authorization holders.

Adm. Order No.: HLA 2-2011(Temp)

Filed with Sec. of State: 3-17-2011

Certified to be Effective: 3-17-11 thru 8-28-11

Notice Publication Date:

Rules Adopted: 331-010-0050

Rules Amended: 331-020-0040

Rules Suspended: 331-010-0050(T), 331-020-0040(T)

Subject: The purpose of this temporary rule is to clarify what constitutes an appearance before the agency during investigations of alleged violations of statutes or rules under the authority of the agency, its boards or councils.

The purpose of this temporary rule is to allow authorization holders in active military status waiver of renewal, fees and continuing education requirements, as well as protocols for restoration of former authorization status.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-010-0050

Authorization Holders; Military Leave

(1) A practitioner authorized to practice under a program listed in ORS 676.606 is not required to renew the authorization or pay renewal fees while in active military service unless required by the authorization holders branch of the military.

(2) To be restored to former authorization status the authorization holder must notify the agency in writing within 60 days of being honorably discharged.

(3) No fees will be due until the following renewal period.

(4) Requirements for completing continuing education hours during an authorization holder's active duty period shall be evaluated on a case by case basis.

Stat. Auth.: ORS 676.615

Stats. Implemented: ORS 676.607 & 676.608

Hist.: HLA 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11; HLA 2-2011(Temp), f. & cert. ef. 3-17-11 thru 8-28-11

331-020-0040

Complaint Processing and Investigation

Pursuant to ORS 676.608, complaints filed with the Oregon Health Licensing Agency will be handled as follows:

(1) The agency will determine if the complaint is related to a profession or occupation regulated and administered by the agency and the complaint falls within authority delegated to the agency by statute.

(2) The agency investigator(s):

(a) Will review the information and as applicable, interview parties and witnesses, and examine physical evidence relating to the complaint;

(b) Will advise on whether an authorization holder or other individual practiced within the acceptable standards of the particular program;

(c) Will make recommendations for agency action.

(3) After receiving advice from the investigator(s), the agency will determine what action will be taken in accordance with ORS 676.608.

(4) As used in ORS 676.608(8), to "appear before the agency" includes: an investigative interview conducted on agency premises or before a board, council, or subcommittee of a board or council; any depositions authorized by the agency; pre-hearing conferences; contested case

hearings; and appearances compelled by subpoena. It does not include an investigative interview conducted telephonically or outside of agency premises.

Stat. Auth.: ORS 183, 676.605, 676.608 & 676.615

Stats. Implemented: ORS 183, 676.605, 676.608 & 676.615

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09; HLA 1-2011(Temp), f. & cert. ef. 3-1-11 thru 8-28-11; HLA 2-2011(Temp), f. & cert. ef. 3-17-11 thru 8-28-11

Rule Caption: Streamlines application process for tattoo temporary practitioner permit, requires current blood-borne pathogens training.

Adm. Order No.: HLA 3-2011(Temp)

Filed with Sec. of State: 4-1-2011

Certified to be Effective: 4-1-11 thru 9-27-11

Notice Publication Date:

Rules Amended: 331-565-0090

Subject: Adopt temporary administrative rule revision to clarify and streamline the application process for tattoo artist Temporary Practitioner Permits for those persons wishing to practice the profession in Oregon on a temporary basis, including at tattooing conventions. The temporary rule revises language that confuses many out-of-state applicants who do not understand the Oregon requirements. The temporary rule allows applicants to attest to their qualifying experience on a form approved by the agency, requires current training in blood-borne pathogens, and removes requirement for basic first aid training.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-565-0090

Temporary Practitioner Permit

(1) Temporary practitioner permit is an authorization pursuant to ORS 690.365 to perform permanent color and tattoo services on a limited basis, not to exceed 15 consecutive calendar days. For the purpose of this rule licensed facility means a permanent color or tattoo facility which holds a current valid facility license, mobile facility license, temporary facility permit or event facility permit.

(2) All applications must be received 15 days before permanent color and tattoo services are provided.

(3) A temporary practitioner permit can be renewed up to four times in a 12 month period from the date the agency processes the initial application. Applicants must submit a renewal application on a form approved by the agency and meet the qualifications of subsection 9 or 10 of this rule.

(4) All requests to renew must be received 15 days before permanent color and tattoo services are provided unless otherwise approved by the agency.

(5) A temporary practitioner must be attached to an authorized or licensed facility.

(6) A temporary practitioner must notify the agency within 24 hours before services are performed at a new licensed facility during a 15-day active period, unless otherwise approved by the agency.

(7) The applicant and the authorized facility may be held responsible for failure to comply with regulations set forth by ORS 676.612, 690.390, OAR 331, divisions 565, 575, 580 and 585.

(8) To be granted a temporary practitioner permit an applicant must submit an application to the agency, on a form approved by the agency, meet the requirements of OAR 331-030-0000, and pay the required fees. The following information must be provided at the time of application:

(a) Dates when permanent color and tattoo services will be provided;

(b) Name, address, phone number and license number of the licensed facility where permanent color and tattoo services will be provided.

(9) To be granted a temporary practitioner permit an applicant must provide satisfactory evidence of meeting requirements, which includes qualifying criteria listed in one of the following pathways:

(a) Non Credentialed: Applicant must provide satisfactory evidence of successful completion of the following training and experience:

(A) Current training in blood-borne pathogens; and

(B) Attest to six months of training or experience, within the last two years, in performing tattoo or permanent color services on a form prescribed by the agency;

(b) Out of State Licensure: Applicant meets the requirements set forth in OAR 331-555-0040.

(10) For the purpose of this rule training includes attendance or participation at an instructional program presented, recognized, or under the

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sponsorship of any permanently organized institution, agency, or professional organization or association recognized by the agency.

(11) All applicants must be 18 years of age or older.

Stat. Auth.: ORS 676.605, 676.606, 676.615, 676.608, 676.612, 676.615, 676.617, 676.618, 676.992, 690.355, 690.360, 690.365, 690.370, 690.380, 690.385, 690.390, 690.405, 690.407 & 690.410

Stats. Implemented: ORS 676.605, 676.606, 676.615, 676.608, 676.612, 676.615, 676.617, 676.618, 676.992, 690.355, 690.360, 690.365, 690.370, 690.380, 690.385, 690.390, 690.405, 690.407 & 690.410

Hist.: HLA 3-2010, f. 3-31-10, cert. ef. 4-1-10; HLA 3-2011(Temp), f. & cert. ef. 4-1-11 thru 9-27-11

Oregon Health Licensing Agency, Board of Direct Entry Midwifery Chapter 332

Rule Caption: Amend requirements related to third degree lacerations, peer review, certain breech births, and post-date protocols.

Adm. Order No.: DEM 1-2011(Temp)

Filed with Sec. of State: 4-4-2011

Certified to be Effective: 4-4-11 thru 9-27-11

Notice Publication Date:

Rules Amended: 332-015-0070, 332-025-0020, 332-025-0021, 332-025-0022, 332-025-0040

Subject: Revise administrative rules related to a licensed direct entry midwife (LDM) repairing third degree lacerations. Currently the practice of repairing third degree lacerations is not universally taught during initial education and training for an LDM. Limiting LDMs to only performing first and second degree laceration repairs protects the public because LDMs are consistently trained in those types of repairs.

Amend general practice standards to address those LDMs who do not attend any births from the requirement of peer review.

Amend intrapartum absolute risk criteria to clarify the type of breech that is restricted and requires the transport and transfer of the client.

Amend mother and baby practice standards to provide clearer fetal surveillance requirements related to post-date protocol. (pregnancy lasting longer than 43 weeks gestation).

Amend approved legend drugs for maternal use to add more forms of procaine HCI, including Novocaine and benzocaine.

Rules Coordinator: Samantha Patnode—(503) 373-1917

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; and

(I) Repairing a second-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; DEM 1-2011(Temp), f. & cert. ef. 4-4-11 thru 9-27-11

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.

(d) If a licensee has not attended any births participation in peer review is not required. Licensee must attest to not having attended any births on a form prescribed by the agency.

(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 imme-

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diate 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:

(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 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; DEM 1-2011(Temp), f. & cert. ef. 4-4-11 thru 9-27-11

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

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(Q) Footling or kneeling breech 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 **third and fourth-degree lacerations;**

- (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

(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.

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(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 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; DEM 1-2011(Temp), f. & cert. ef. 4-4-11 thru 9-27-11

332-025-0022

Mother and Baby Care Practice Standards

(1) An LDM may:

- (a) Order and receive laboratory and ultrasound results;
- (b) Order and receive fetal surveillance testing and results.
- (c) Fit barrier methods of contraception, 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) Obtain fetal surveillance testing no later than 41 weeks and three days by arranging 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;

(S) When risk factors that could impair fetal/placental circulation are present, obtain fetal surveillance testing as indicated anytime during the pregnancy.

(T) If the LDM is denied access to fetal surveillance testing listed under Subsection R of this section, the LDM must document the place, date, time, and name of individual who denied access in the mother’s records. If access to fetal surveillance testing is denied, then the LDM must perform an accelerated auscultation test twice weekly until delivery.

(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;

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(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

(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 2-17-00; 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; DEM 1-2011(Temp), f. & cert. ef. 4-4-11 thru 9-27-11

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, benzocaine, cetacane 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; DEM 1-2011(Temp), f. & cert. ef. 4-4-11 thru 9-27-11

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.

Adm. Order No.: OHCS 5-2011

Filed with Sec. of State: 3-21-2011

Certified to be Effective: 3-21-11

Notice Publication Date: 2-1-2011

Rules Adopted: 813-007-0057

Rules Repealed: 813-007-0055, 813-007-0060

Subject: 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—(503) 986-2012

813-007-0057

Civil Penalty Schedule

(1) This rule governs the application of a civil penalty under section 4, chapter 619, Oregon Laws 2005, as amended by section 12, chapter 819, Oregon Laws 2009. A landlord or owner is subject to a civil penalty for each act of noncompliance, according to the following schedule of penalties:

(a) Failure to register and to pay registration fee: an amount not to exceed \$1,000

(b) Failure to register only: an amount not to exceed \$500.

(c) Failure to pay registration fee only: an amount not to exceed \$500.

(d) Late submission of a registration or submission of an incomplete or inaccurate registration: an amount not to exceed \$300.

(e) Late submission of registration fee or submission of less than the full amount of the registration fee: an amount not to exceed \$300.

(f) Failure to satisfy continuing education requirements: an amount not to exceed \$1,000.

(2) When the Department notifies a landlord or owner of the Department's intention to impose a civil penalty, the Department may provide for one or more of the following in the notice as the Department determines to be appropriate for facilitating a just resolution of the matter and for furthering the interests of the Department:

(a) That the Department may toll the time provided for the landlord's or owner's response to the notice.

(b) That if the landlord or owner requests a hearing, the Department may toll the date of the hearing if the landlord or owner requests an opportunity to discuss and resolve the matter.

(c) That the Department may toll the effective date of the final order.

(3) When an Administrative Law Judge hears a proposed civil penalty, the Department retains authority to modify the order of the Administrative Law Judge and to issue the final order in the matter.

(4) A civil penalty assessed against a landlord or owner is subject to modification by the Department before the date on which the order becomes final if the Department determines that mitigating circumstances justify the modification. Mitigating circumstances that the Department may consider include but are not limited to the following:

(a) The intent of the landlord or owner regarding the noncompliance;

(b) Good faith efforts by the landlord or owner to subsequently comply in the matter or to otherwise modify behavior;

(c) The degree of harm arising from the noncompliance;

(d) The hardship on the landlord or owner, relating to the landlord's or owner's ability to pay the civil penalty;

(e) The requirements of justice in the particular case; and

(f) Considerations of appropriate consistency in treating incidences of noncompliance.

(5) An order in a civil penalty that becomes final is subject to modification by the Department for correction of errors in the order or for amendment in the event of further negotiations between the Department and the landlord or owner.

Stat. Auth.: Sec. 9, ch. 816, OL 2009

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

Hist.: OHCS 14-2010(Temp), f. & cert. ef. 9-23-10 thru 3-21-11; OHCS 5-2011, f. & cert. ef. 3-21-11

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Oregon Medical Board Chapter 847

Rule Caption: Changes to EMT-P scope of practice: Central IV access, medications and blood products, ECG monitoring.

Adm. Order No.: OMB 5-2011

Filed with Sec. of State: 4-8-2011

Certified to be Effective: 4-8-11

Notice Publication Date: 2-1-2009

Rules Amended: 847-035-0030

Subject: The proposed rule change allows EMT-Ps to access indwelling catheters and implanted central IV ports for fluid and medical administration; adds language that EMT-Ps may administer any medication or blood product after adequate and appropriate instruction, including risks, benefits and use of the medication; and allows EMT-Ps to initiate and interpret ECG monitoring.

Rules Coordinator: Malar Ratnathicam — (971) 673-2713

847-035-0030

Scope of Practice

(1) The Oregon Medical Board has established a scope of practice for emergency and nonemergency care for First Responders and EMTs. First Responders and EMTs may provide emergency and nonemergency care in the course of providing prehospital care as an incident of the operation of ambulance and as incidents of other public or private safety duties, but is not limited to “emergency care” as defined in OAR 847-035-0001(5).

(2) The scope of practice for First Responders and EMTs is not intended as statewide standing orders or protocols. The scope of practice is the maximum functions which may be assigned to a First Responder or EMT by a Board-approved supervising physician.

(3) Supervising physicians may not assign functions exceeding the scope of practice; however, they may limit the functions within the scope at their discretion.

(4) Standing orders for an individual EMT may be requested by the Board or Section and shall be furnished upon request.

(5) No EMT may function without assigned standing orders issued by Board-approved supervising physician.

(6) An Oregon-certified First Responder or EMT, acting through standing orders, shall respect the patient’s wishes including life-sustaining treatments. Physician supervised First Responders and EMTs shall request and honor life-sustaining treatment orders executed by a physician, nurse practitioner or physician assistant if available. A patient with life-sustaining treatment orders always requires respect, comfort and hygienic care.

(7) A First Responder may perform the following procedures without having signed standing orders from a supervising physician:

- (a) Conduct primary and secondary patient examinations;
- (b) Take and record vital signs;
- (c) Utilize noninvasive diagnostic devices in accordance with manufacturer’s recommendation;
- (d) Open and maintain an airway by positioning the patient’s head;
- (e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;
- (f) Provide care for soft tissue injuries;
- (g) Provide care for suspected fractures;
- (h) Assist with prehospital childbirth; and
- (i) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior EMT with the transporting ambulance.

(8) A First Responder may perform the following additional procedures only when the First Responder is part of an agency which has a Board-approved supervising physician who has issued written standing orders to that First Responder authorizing the following:

- (a) Administration of medical oxygen;
- (b) Maintain an open airway through the use of:
 - (A) A nasopharyngeal airway device;
 - (B) A noncuffed oropharyngeal airway device;
 - (C) A Pharyngeal suctioning device.
- (c) Operate a bag mask ventilation device with reservoir;
- (d) Provision of care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia; and
- (e) Administer epinephrine by automatic injection device for anaphylaxis;
- (f) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator, only when the First Responder:

(A) Has successfully completed a Section-approved course of instruction in the use of the automatic or semi-automatic defibrillator; and

(B) Complies with the periodic requalification requirements for automatic or semi-automatic defibrillator as established by the Section.

(9) An Oregon-certified EMT-Basic may perform the following procedures:

(a) Perform all procedures that an Oregon-certified First Responder can perform;

(b) Ventilate with a non-invasive positive pressure delivery device;

(c) Insert a cuffed pharyngeal airway device in the practice of airway maintenance. A cuffed pharyngeal airway device is:

(A) A single lumen airway device designed for blind insertion into the esophagus providing airway protection where the cuffed tube prevents gastric contents from entering the pharyngeal space; or

(B) A multi-lumen airway device designed to function either as the single lumen device when placed in the esophagus, or by insertion into the trachea where the distal cuff creates an endotracheal seal around the ventilatory tube preventing aspiration of gastric contents.

(d) Perform tracheobronchial tube suctioning on the endotracheal intubated patient;

(e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(f) Provide care for suspected shock, including the use of the pneumatic anti-shock garment;

(g) Provide care for suspected medical emergencies, including:

(A) Obtaining a capillary blood specimen for blood glucose monitoring;

(B) Administer epinephrine by subcutaneous injection or automatic injection device for anaphylaxis;

(C) Administer activated charcoal for poisonings; and

(D) Administer aspirin for suspected myocardial infarction.

(h) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;

(i) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;

(j) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;

(k) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

(l) Assist a patient with administration of sublingual nitroglycerine tablets or spray and with metered dose inhalers that have been previously prescribed by that patient’s personal physician and that are in the possession of the patient at the time the EMT-Basic is summoned to assist that patient;

(m) In the event of a release of military chemical warfare agents from the Umatilla Army Depot, the EMT-Basic who is a member or employee of an EMS agency serving the DOD-designated Immediate Response Zone who has completed a Section-approved training program may administer atropine sulfate and pralidoxime chloride from a Section-approved pre-loaded auto-injector device, and perform endotracheal intubation, using protocols promulgated by the Section and adopted by the supervising physician. 100% of EMT-Basic actions taken pursuant to this section shall be reported to the Section via a copy of the prehospital emergency care report and shall be reviewed for appropriateness by Section staff and the Subcommittee on EMT Certification, Education and Discipline;

(n) In the event of a release of organophosphate agents the EMT-Basic, who has completed Section-approved training, may administer atropine sulfate and pralidoxime chloride by autoinjector, using protocols approved by the Section and adopted by the supervising physician; and

(o) In the event of a declared Mass Casualty Incident (MCI) as defined in the local Mass Casualty Incident plan, the EMT-Basic may monitor patients who have isotonic intravenous fluids flowing.

(10) An Oregon certified Advanced Emergency Medical Technician (AEMT) may perform the following procedures:

(a) Perform all procedures that an Oregon-certified EMT-Basic can perform;

(b) Initiate and maintain peripheral intravenous (I.V.) lines;

(c) Initiate saline or similar locks;

(d) Draw peripheral blood specimens;

(e) Initiate and maintain an intraosseous in the pediatric patient;

(f) Tracheobronchial suctioning of an already intubated patient;

(g) Administer the following medications under specific written protocols authorized by the supervising physician or direct orders from a licensed physician:

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- (A) Physiologic isotonic crystalloid solution.
 - (B) Anaphylaxis; epinephrine
 - (C) Antidotes: Naloxene hydrochloride;
 - (D) Antihypoglycemics:
 - (i) Hypertonic glucose,
 - (ii) Glucagon
 - (E) Vasodilators: Nitroglycerine;
 - (F) Nebulized bronchodilators:
 - (i) Albuterol;
 - (ii) Ipratropium bromide;
 - (G) Analgesics for acute pain: nitrous oxide.
- (11) An Oregon certified EMT-Intermediate may perform the following procedures:
- (a) Perform all procedures that an Oregon-certified Advanced EMT can perform;
 - (b) Initiate and maintain an intraosseous infusion;
 - (c) Administer the following medications under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician:
 - (A) Vasoconstrictors:
 - (i) Epinephrine;
 - (ii) Vasopressin;
 - (B) Antiarrhythmics:
 - (i) Atropine sulfate;
 - (ii) Lidocaine;
 - (iii) Amiodarone;
 - (C) Analgesics for acute pain:
 - (i) Morphine;
 - (ii) Nalbuphine Hydrochloride;
 - (iii) Ketorolac tromethamine;
 - (iv) Fentanyl;
 - (D) Antihistamine: Diphenhydramine;
 - (E) Diuretic: Furosemide;
 - (F) Intraosseous infusion anesthetic; Lidocaine;
 - (G) Anti-Emetic: Ondansetron;
 - (d) Administer immunizations in the event of an outbreak or epidemic as declared by the Governor of the state of Oregon, the State Public Health Officer or a county health officer, as part of an emergency immunization program, under the agency's supervising physician's standing order;
 - (e) Administer immunizations for seasonal and pandemic influenza vaccinations according to the CDC Advisory Committee on Immunization Practices (ACIP), and/or the Oregon State Public Health Officer's recommended immunization guidelines as directed by the agency's supervising physician's standing order.
 - (f) Distribute medications at the direction of the Oregon State Public Health Officer as a component of a mass distribution effort.
 - (g) Administer routine or emergency immunizations, as part of an EMS Agency's occupational health program, to the EMT's EMS agency personnel, under the supervising physician's standing order.
 - (h) Insert an orogastric tube;
 - (i) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, and if clear and understandable written and verbal instructions for such maintenance have been provided by the physician, nurse practitioner or physician assistant at the sending medical facility;
 - (j) Electrocardiographic rhythm interpretation;
 - (k) Perform cardiac defibrillation with a manual defibrillator.
 - (l) Access indwelling catheters and implanted central IV ports for fluid and medication administration.
- (12) An Oregon-certified EMT-Paramedic may perform the following procedures:
- (a) Perform all procedures that an Oregon-certified EMT-Intermediate can perform;
 - (b) Initiate the following airway management techniques:
 - (A) Endotracheal intubation;
 - (B) Cricothyrotomy; and
 - (C) Transtracheal jet insufflation which may be used when no other mechanism is available for establishing an airway.
 - (c) Initiate a nasogastric tube;
 - (d) Provide advanced life support in the resuscitation of patients in cardiac arrest;
 - (e) Perform emergency cardioversion in the compromised patient;
 - (f) Attempt external transcutaneous pacing of bradycardia that is causing hemodynamic compromise;

- (g) Electrocardiographic interpretation.
 - (h) Initiate needle thoracentesis for tension pneumothorax in a pre-hospital setting;
 - (i) Initiate placement of a femoral intravenous line when a peripheral line cannot be placed;
 - (j) Initiate placement of a urinary catheter for trauma patients in a pre-hospital setting who have received diuretics and where the transport time is greater than thirty minutes; and
 - (k) Initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.
- (13) The Board has delegated to the Section the following responsibilities for ensuring that these rules are adhered to:
- (a) Designing the supervising physician and agent application;
 - (b) Approving a supervising physician or agent; and
 - (c) Investigating and disciplining any EMT or First Responder who violates their scope of practice.

(d) The Section shall provide copies of any supervising physician or agent applications and any EMT or First Responder disciplinary action reports to the Board upon their request.

(14) The Section shall immediately notify the Board when questions arise regarding the qualifications or responsibilities of the supervising physician or agent of the supervising physician.

Stat. Auth.: ORS 682.245
Stats. Implemented: ORS 682.245
Hist.: ME 2-1983, f. & ef. 7-21-83; ME 3-1984, f. & ef. 1-20-84; ME 12-1984, f. & ef. 8-2-84; ME 7-1985, f. & ef. 8-5-85; ME 12-1987, f. & ef. 4-28-87; ME 27-1987(Temp), f. & ef. 11-5-87; ME 5-1988, f. & cert. ef. 1-29-88; ME 12-1988, f. & cert. ef. 8-5-88; ME 15-1988, f. & cert. ef. 10-20-88; ME 2-1989, f. & cert. ef. 1-25-89; ME 15-1989, f. & cert. ef. 9-5-89, & corrected 9-22-89; ME 6-1991, f. & cert. ef. 7-24-91; ME 10-1993, f. & cert. ef. 7-27-93; ME 3-1995, f. & cert. ef. 2-1-95; ME 1-1996, f. & cert. ef. 2-15-96; ME 3-1996, f. & cert. ef. 7-25-96; BME 6-1998, f. & cert. ef. 4-27-98; BME 13-1998(Temp), f. & cert. ef. 8-6-98 thru 2-2-99; BME 14-1998, f. & cert. ef. 10-26-98; BME 16-1998, f. & cert. ef. 11-24-98; BME 13-1999, f. & cert. ef. 7-23-99; BME 14-2000, f. & cert. ef. 10-30-00; BME 11-2001, f. & cert. ef. 10-30-01; BME 9-2002, f. & cert. ef. 7-17-02; BME 10-2002, f. & cert. ef. 7-22-02; BME 1-2003, f. & cert. ef. 1-27-03; BME 12-2003, f. & cert. ef. 7-15-03; BME 4-2004, f. & cert. ef. 1-27-04; BME 11-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 12-2004(Temp), f. & cert. ef. 6-11-04 thru 12-8-04; BME 21-2004(Temp), f. & cert. ef. 11-15-04 thru 4-15-05; BME 2-2005, f. & cert. ef. 1-27-05; BME 5-2005, f. & cert. ef. 4-21-05; BME 9-2005, f. & cert. ef. 7-20-05; BME 18-2006, f. & cert. ef. 7-25-06; BME 22-2006, f. & cert. ef. 10-23-06; BME 7-2007, f. & cert. ef. 1-24-07; BME 11-2007, f. & cert. ef. 4-26-07; BME 24-2007, f. & cert. ef. 10-24-07; BME 11-2008, f. & cert. ef. 4-24-08; BME 19-2008, f. & cert. ef. 7-21-08; BME 10-2009, f. & cert. ef. 5-1-09; BME 13-2009, f. & cert. ef. 7-20-09; BME 18-2009, f. & cert. ef. 10-23-09; BME 22-2009(Temp), f. & cert. ef. 10-23-09 thru 4-15-10; BME 5-2010, f. & cert. ef. 1-26-10; BME 8-2010(Temp), f. & cert. ef. 4-26-10 thru 10-15-10; BME 12-2010, f. & cert. ef. 7-26-10; BME 18-2010, f. & cert. ef. 10-25-10; OMB 1-2011, f. & cert. ef. 2-11-11; OMB 5-2011, f. & cert. ef. 4-8-11

Oregon State Marine Board Chapter 250

Rule Caption: Slow-no-wake on Dexter Dam Reservoir from the Covered Bridge to the west shore.

Adm. Order No.: OSMB 5-2011(Temp)

Filed with Sec. of State: 3-28-2011

Certified to be Effective: 4-8-11 thru 4-11-11

Notice Publication Date:

Rules Amended: 250-020-0221

Subject: This rule will temporarily adopt a slow-no-wake zone on the portion of the lake from the Covered Bridge to the west shore line for the weekend of April 8–10, 2011 for the scheduled university PAC 10 Rowing Championships.

Rules Coordinator: June LeTarte—(503) 378-2617

250-020-0221

Boat Operations on Certain Waters in Lane County

(1) No person shall operate a motorboat in excess of 5 MPH ("Slow-No Wake") in the following areas:

(a) Triangle Lake: Within 200 feet of a marked swimming area or a designated public launching ramp;

(b) Fern Ridge Lake:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) In the Coyote Creek Channel;

(C) Between shore and buoy line which extends southerly from the north shore to a point approximately 200 feet of the northern most Eugene Yacht Club mooring dock thence generally south and west approximately 200 feet of the docks to a point approximately 200 feet south of the Tri Pass Club mooring dock thence generally west to the southern tip of the Tri Pass

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Club dock as buoyed except for the buoyed corridor immediately south of the Eugene Yacht Club southernmost dock;

(D) South of the buoy line which extends easterly from a point approximately 100 yards north of the Perkins Boat Ramp to the adjacent shoreline;

(E) In the Main Long Tom River Channel.

(c) Dexter Dam Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) Within 50 feet of the causeway crossing the reservoir.

(C) On the portion of the lake from the Covered Bridge to the west shore from 3:00 pm, Friday, April 8, 2011 through 11:59 am on Sunday, April 10, 2011.

(d) Lookout Point Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) East of the Southern Pacific Railroad bridge.

(e) Dorena Dam Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp.

(B) Southeast of a line between markers on Humphrey Point and the northeast shore.

(f) Cottage Grove Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) South of a line between a marker on the east shore, near the Wilson Creek area, and on the west shore near Cedar Creek.

(g) Hills Creek Reservoir:

(A) Within 200 feet of a marked swimming area or a designated public launching ramp;

(B) On Packard Creek arm west of Rigdon Road (USFS Road #21);

(C) On Hills Creek south of the Hills Creek Crossing Bridge;

(D) On the Middle Fork, Willamette River south of the Rigdon Road (USFS #21) (Upper Crossing) Bridge;

(E) No person shall operate a motorboat for any purpose on Larison Creek arm west of Rigdon Road (USFS Road #21).

(h) Collard Lakes;

(i) Picket Lake;

(j) Munsel Lake — west of the line of marker buoys;

(k) Fall Creek Lake:

(A) Within 200 feet of a designated public launching ramp or marked swimming area;

(B) On Fall Creek upriver from the buoys located approximately 200 feet downstream of the Big Fall Creek Road;

(C) On Winberry Creek upriver from the buoys located approximately 1800 feet downstream of the Winberry Creek Road Bridge.

(l) Siltcoos Lake:

(A) Within 200 feet of a designated public launching ramp or marked swimming area;

(B) Between shore and buoy line at the mouth of Kiechle Arm beginning at a point at the east shoreline of Arrowhead Point and extending northerly approximately 900 yards to a point approximately 100 yards off shore of Camp Baker during the period of June 1 through September 30.

(C) In Miller Arm north of the buoy line, located at the entrance near Nightingales' Fishing Camp, during the period of May 1 through September 31.

(2) No person shall operate a motorboat in excess of 5 MPH on Leaburg Reservoir and the McKenzie River from the dam upstream to Good Pasture Bridge.

(3) No person shall operate a motorboat in excess of a "Slow-No Wake" speed within 300 feet of a boat launching ramp or a boat moorage on the following bodies of water (for purpose of this regulation, "Slow-No Wake" speed means the speed of a boat shall not exceed 5 MPH):

(a) Cougar Reservoir;

(b) Blue River Reservoir;

(c) Siuslaw River — between the river entrance and the highway bridge at Mapleton.

(4) No person shall operate a motorboat for any purpose on the following lakes: Scott, Melakwa, Hidden, Blair, Upper Erma Bell, Middle Erma Bell, Lower Erma Bell, Torrey, Whig, Wahanna, Rigdon, Lower Rigdon, Kiwa, Upper Eddeleo, Round, Betty, and Alameda.

(5) No person shall operate a motorboat for any purpose in excess of 10 MPH on Munsel Lake east of the line of marker buoys, except from June 1 through September 30, between the hours of 10 a.m. and 5 p.m.

(6) No person shall operate a motorboat on the McKenzie River above Good Pasture Bridge, except a representative of the Oregon State Police or the County Sheriff's Office pursuant to a criminal investigation or search and rescue operation.

(7) No person shall operate a motorboat, except with an electric motor:

(a) In the Old Long Tom River Channel;

(b) On Fern Ridge Reservoir south of State Highway 126;

(c) On Hult Reservoir.

(8) No person shall operate a propeller-driven airboat or non-displacement hull type hovercraft in the following areas on Fern Ridge Reservoir where there is emergent vegetation present:

(a) Coyote Creek area — east of a line beginning at the West Coyote Creek bridge at Highway 126 extending north approximately one mile to a point near the mouth of Coyote Creek, then extending north approximately 1.4 miles to a point located approximately 100 yards off shore of the northwest corner of Gibson Island;

(b) Amazon Bay area — east of a line beginning at a point located approximately 100 yards off shore of the northwest corner of Gibson Island extending northeast approximately one mile to the Shore Lane access;

(c) South Marsh area — west of a line extending from a point on the shoreline at the southern boundary of Zumwalt Park near the end of Vista Drive extending southeast approximately one mile to a point on the shoreline at the tip of Perkins Peninsula;

(d) Long Tom Area — southwest of a line beginning at a point on the shore line at the end of Moyer Lane extending southeast approximately 0.9 miles to a point on the west shoreline of the Jeans Peninsula at the north end of Winter Lane.

(9) No person shall operate a motorboat north and east of a line across the entrance of Bannister Cove on Lookout Point Reservoir, as marked.

(10) Use of internal combustion motors in boats and floatplanes operating on the surface of Waldo Lake is prohibited year round. "Watercraft" includes boats and floatplanes operating on the surface of Waldo Lake. Official use of internal combustion motors in watercraft operated on the surface of Waldo Lake by local, state or federal governmental officials or agents is allowed for the following activities: search and rescue, law enforcement and fire suppression. Previous approval by the Willamette National Forest Supervisor is required for other activities undertaken by local, state or federal government officials or agents that involve use of internal combustion motors in watercraft operated on the surface of Waldo Lake. Emergency landings of private or governmental floatplanes on Waldo Lake are allowed without previous approval.

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.175

Hist.: MB 21, f. 8-23-63; MB 27, f. 6-3-65; MB 31, f. 6-20-66; MB 42, f. 12-3-68; MB 44, f. 8-21-69; MB 48, f. 6-28-71, ef. 7-25-71; MB 49, f. 8-14-72, ef. 9-1-72; MB 3-1979(Temp), f. & ef. 6-22-79; MB 5-1979, f. 7-31-79, ef. 8-1-79; Renumbered from 250-020-0131; MB 8-1981, f. & ef. 11-16-81; MB 5-1982, f. & ef. 6-1-82; MB 6-1982, f. & ef. 6-1-82; MB 15-1984, f. 11-30-84, ef. 12-1-84; MB 6-1995, f. & cert. ef. 7-14-95; MB 9-1996, f. & cert. ef. 5-29-96; OSMB 2-2000, f. & cert. ef. 7-14-00; OSMB 2-2001, f. & cert. ef. 1-25-01; OSMB 1-2008, f. & cert. ef. 1-15-08; OSMB 3-2010, f. & cert. ef. 1-15-10; OSMB 9-2010(Temp), f. & cert. ef. 5-6-10 thru 9-30-10; Administrative correction 10-26-10; OSMB 13-2010, f. & cert. ef. 11-1-10; OSMB 5-2011(Temp), f. 3-28-11, cert. ef. 4-8-11 thru 4-11-11

Oregon State Treasury Chapter 170

Rule Caption: Requirement for financial advisors to be registered with the Securities and Exchange Commission (SEC) and MSRB.

Adm. Order No.: OST 2-2011

Filed with Sec. of State: 4-1-2011

Certified to be Effective: 4-1-11

Notice Publication Date: 3-1-2011

Rules Amended: 170-062-0000

Rules Repealed: 170-062-0000(T)

Subject: New federal regulations require municipal financial advisors to register with the SEC (17 CFR § 240.15Ba2-6T) and prohibit a municipal financial advisor from serving as an underwriter in the same negotiated bond sale (Municipal Securities rulemaking Board (MSRB) Rule G-23). This rule conforms Oregon practice to federal regulation.

Rules Coordinator: Sally Wood—(503) 378-4990

ADMINISTRATIVE RULES

170-062-0000

Procedure for Submission, Review and Approval of an Advance Refunding Plan

(1) Plan Contents and Filing. An Advance Refunding Plan for a public body (as defined in ORS 287A.001(13)) consists of a:

(a) Request for approval for an advance refunding bond sale submitted to OST. The request should include the name, phone number, U.S. mailing and e-mail address for the public body and for their bond counsel, financial advisor, escrow verification agent, underwriter and trustee;

(b) Copy of the resolution, ordinance or other documents authorizing submission of the plan to the Office of the Oregon State Treasurer ("OST");

(c) Statement of the primary purpose of the advance refunding sale. Permissible purposes are:

(A) A present value savings. To effect a savings, discounted to present value;

(B) A favorable reorganization of debt. Bonds issued for a favorable reorganization of debt require submission of a detailed written analysis elaborating the financial, legal or other benefits of the reorganization to the public body or state agency. Valid reasons for a reorganization of debt may include, but are not limited to:

(i) Replacement of undesirable or overly restrictive bond covenants or terms, such as liquidity covenants and debt service coverage requirements or release of reserve requirements;

(ii) Restructuring of debt payments considered by the public body to be favorable to the financial health of the relevant jurisdiction or its taxpayers or ratepayers;

(C) Fiscal distress. To pay or discharge all or any part of a bonded obligation or series or issue of bonds, including any interest thereon, in arrears or about to become due and for which sufficient funds are not available.

(d) Description of the bonds to be refunded, including: date and premium, if any, when each is first callable; semi-annual debt service to final maturity for each issue; par amount originally issued, current amount outstanding, proposed amount and maturities to be refunded; the dated date; and the purpose for which the bonds were issued;

(e) Description of the advance refunding issue including the proposed: call date and premium, if any; semi-annual debt service to final maturity; present value of each semi-annual payment; par amount; dated date; sale and closing date; True Interest Cost as set forth in OAR 170-061-0000(1); and the federal arbitrage yield limit.

(f) A description of the escrow account, listing the type of securities to be used and the redemption date of the account;

(g) Preliminary Net Present Value Savings (NPVS): Present value savings is defined as the present value of the difference in debt service between the proposed refunded debt service and the proposed refunding debt service, discounted at the arbitrage yield of the refunding debt service. Any issuance expenses paid from sources other than bond proceeds and any other cash contributed to the escrow other than from bond proceeds must also be subtracted from proceeds to determine NPVS.

(h) Itemization of all administrative costs, expenses or fees associated with the refunding. OST will determine if the fees are comparable to similar offerings and if excessive, approval may be withheld;

(i) For a public body, a copy of the contract with their financial advisor;

(j) Completed MDAC Form 1;

(k) Final Official Statement, if the bonds have been publicly offered;

(l) Final Net Present Value Savings as described in subsection (g) of this section;

(m) Copy of the arbitrage or tax certificate for the refunding;

(n) Copy of bond counsel's approving legal opinion;

(o) Copy of the escrow verification report demonstrating the ability of the escrow account to meet all future debt service and related costs relative to the refunded bonds;

(p) Copy of the Escrow Deposit Agreement;

(q) Copy of the underwriting or bond purchase agreement, if sold on a negotiated basis;

(r) Copy of the letter from the financial advisor to the public body or state agency as described in section (2) of this rule;

(s) Completed MDAC Form 2; and

(t) Completed MDAC Form 3, if using a synthetic fixed rate refunding issue.

(2) Financial advisor required. A public body must employ a financial advisor whose function is to advocate the interest of and advise them on the refinancing transaction. The financial advisor must be registered with the Securities and Exchange Commission as a financial advisor as required

under 17 CFR § 240.15Ba2-6T, or its successor permanent rule. The financial advisor may not also serve as the underwriter in the same negotiated bond sale. Prior to closing, the public body must receive from the financial advisor a letter stating that the advisor has reviewed the assumptions included in the plan and that the plan is consistent with this rule. The letter must include a recommendation on the desirability or undesirability of doing the advance refunding and the reasons therefor. The contract with the financial advisor must reflect the obligations of the parties in the event the sale is not consummated as planned.

(3) Significant Savings Tests. Equating or surpassing any one of the following tests indicates that the present value savings purpose, as required by subsection (1)(c)(A) of this rule, has been met:

(a) Present value savings of \$5 million or more; or

(b) A minimum savings ratio of 3.0 percent for a fixed rate refunding issue or a minimum savings ratio of 5.0 percent for a synthetic fixed rate refunding issue or other interest rate exchange agreement in conjunction with the refunding issue. If using an interest rate exchange agreement to synthetically fix a variable rate issue, the agreement must be for the maturity of the variable rate issue. The savings ratio is the net total present value savings divided by the proceeds of the refunding bonds, expressed as a percent.

(4) OST Approval Procedure.

(a) Preliminary Approval. Items in subsections (1)(a) through (1)(j) of this rule are initial components of an advance refunding plan and are required for preliminary approval. If approved, the OST will notify the public body of OST's preliminary approval and state its intention to issue a final approval conditional upon receipt and approval of items in subsections (1)(k) through (1)(t) of this rule;

(b) Preliminary advance refunding plans should be submitted to OST sufficiently in advance to allow 10 working days for review. The 10-day review period begins the working day after all items (1)(a) through (1)(j) of this rule and the application fee identified in OAR 170-061-0015 have been received;

(c) Preliminary approval is valid for a period of six months from the date of the preliminary approval letter. After the six month period expires a new application fee and advance refunding plan are required.

(d) Final Approval. Items in subsections (1)(k) through (1)(t) of this rule are the final components of an advance refunding plan and must be received at least five working days prior to final approval. The five-day period begins after receipt of all items required for final approval.

(e) At the discretion of OST, drafts of preliminary and final components of advance refunding plans may be acceptable with the understanding that finalized documents will be provided within five working days of the bond closing.

(5) Administrative Expenses.

(a) To reimburse OST for the services, duties and activities of OST in connection with reviewing proposals, a fee and other expenses will be charged to public bodies as identified in OAR 170-061-0015.

(6) Ongoing Evaluation. OST evaluates the statewide impact of advance refunding. Adverse trends associated with advance refunding bond sales may result in a review and revision of the savings tests, thereby diminishing any undesirable impact upon the higher priority "new money" bond issues.

(7) Waiver of Certain Provisions. OST may waive certain provisions of this rule to accommodate unusual circumstances.

(8) Noncompliance. If OST finds that an advance refunding plan is not in substantial compliance with ORS 287A.370 and this rule, the plan may not be approved. Notice that the plan does not comply, and the reasons for this finding will be sent to the public body or state agency and its bond counsel within 30 business days after receipt of the plan.

(9) Address. Submit Advance Refunding Plans as provided in OAR 170-055-0001(4).

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

Stat. Auth.: ORS 287A.365

Stats. Implemented: ORS 287A.360 - 287A.380

Hist.: TD 2-1986, f. & ef. 6-16-86; TD 2-1990, f. 9-18-90, cert. ef. 9-19-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 5-2004, f. & cert. ef. 6-23-04; OST 2-2006, f. & cert. ef. 8-4-06; OST 7-2008, f. & cert. ef. 12-29-08; OST 5-2010(Temp), f. 11-29-10, cert. ef. 12-1-10 thru 5-29-11; OST 2-2011, f. & cert. ef. 4-1-11

Parks and Recreation Department Chapter 736

Rule Caption: Implements new federal ADA regulations in Oregon State Parks general park rules.

Adm. Order No.: PRD 2-2011(Temp)

Filed with Sec. of State: 3-24-2011

ADMINISTRATIVE RULES

Certified to be Effective: 3-24-11 thru 9-15-11

Notice Publication Date:

Rules Amended: 736-010-0015, 736-010-0025, 736-010-0026, 736-010-0030

Subject: New federal regulations implementing the Americans with Disabilities Act of 1990 (42 U.S.C. 12181) (ADA) expand the types of mobility devices that may be used for access. This broadening of the range of devices that may now be used requires changes to OAR 736, division 10, to allow such devices for the purposes of ADA access. The new ADA regulations also define "Service Animal" which is being incorporated into division 10 rules, and require that miniature horses be allowed in specific facilities subject to certain considerations. These temporary rules will be replaced by permanent division 10 rules through the normal process later this year.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-010-0015

Definitions

As used in this division, unless the context requires otherwise:

(1) "District Manager" means the immediate supervisor of park managers within a specified geographic region of the state.

(2) "Commission" means the Oregon State Parks and Recreation Commission.

(3) "Department" means the Oregon State Parks and Recreation Department.

(4) "Director" means the department director.

(5) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations and to issue oral or written warnings or citations to enforce park area rules.

(6) "Park Area" means any state park, wayside, corridor, monument, historic, trail, or recreation area, including the ocean shore adjacent to any park area boundary, under the jurisdiction of the department.

(7) "Park Employee" means an employee of the department.

(8) "Park Manager" means the supervisor or designated employee in charge of a park area.

(9) "Park Resources" means any natural, cultural, or human-made structure or feature of a park area.

(10) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(11) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality, or a non-profit entity.

(12) "Service Animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the handler's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

(13) "Violate" includes failure to comply.

(14) "Wheelchair" means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.050, 390.111 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07; PRD 2-2011(Temp), f. & cert. ef. 3-24-11 thru 9-15-11

736-010-0025

Motor Vehicles

(1) All park area roadways are considered public roadways and all provisions of motor vehicle laws of the State of Oregon are applicable and enforceable. Motorists must comply with motor vehicle regulatory signs posted in park areas.

(2) Motor vehicles shall be operated only on roads and in parking areas constructed or designated for motor vehicle use.

(3) Where not otherwise posted, motor vehicles may not be operated within a park area at speeds in excess of 25 miles per hour.

(4) Automobiles, trailers, or other vehicles shall be parked only in designated parking areas.

(5) The department may have a vehicle towed at the owner's expense if a vehicle is parked in a fire lane, roadway, campsite, entry way, driveway or other location in a manner that impedes park operations, safety, or both.

(6) Abandoned vehicles exceeding 72 hours or vehicles owned by a person who has been excluded or who is in violation of criminal trespass may be towed at the owner's expense.

(7) All motor vehicles and trailers parking overnight in day use areas must obtain a permit. Motor vehicles and trailers without a permit are subject to towing at the owner's expense.

(8) Unlicensed motorized vehicles, except park area service vehicles, may not be operated in park areas unless otherwise posted, with the exception of the operation of motor assisted scooters by disabled persons on bicycle lanes or paths.

(9) A person may operate an Off-Highway Vehicle (OHV) only in designated off-highway riding areas or on park roadways which are signed for OHV use.

(10) A person may operate an OHV in park areas only during those seasons and hours of operation which are established by the park manager.

(11) A person shall operate an OHV below the maximum permissible decibel level.

(12) A person may not operate a motor assisted scooter in a park area, including on a bicycle lane or bicycle path.

(13) The park manager or his or her designee will allow the use of other power-driven mobility devices by individuals with mobility disabilities, in areas open to the public unless it is determined that the device cannot be operated in accordance with legitimate safety concerns for the operator, park visitors and park facilities. In determining if the device can be operated in a safe manner the manager or designee will consider the following criteria:

(a) The type, size, weight, dimensions, and speed of the device;

(b) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

(c) The facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

(d) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility or area; and

(e) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with applicable state laws and regulations.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.330, 819.110, 819.120, 811 et seq., 814.500, 814.516, 814.550 & 814.554

Hist.: 1 OTC 17, 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 1-1994, f. & cert. ef. 2-9-94; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07; PRD 2-2011(Temp), f. & cert. ef. 3-24-11 thru 9-15-11

736-010-0026

Non-Motorized Vehicles, Cycles or Similar Devices

(1) A person operating a bicycle, skateboard, scooter, roller- or inline skate, or other wheeled, operator-propelled equipment that transports the operator on land must comply with the following:

(a) Motor vehicle and bicycle regulatory signs posted in park areas,

(b) Persons under 16 years of age are required to wear protective headgear,

(A) In the event that a person under 11 years of age violates this subsection, the notice of violation shall be issued to the person's parent, legal guardian or person with legal responsibility.

(B) In the event that a person between 11 and 16 years of age violates this subsection, the notice of violation may be issued to the violator or that person's parent, legal guardian or person with legal responsibility.

(c) Restrict speed and manner of operation to a reasonable and prudent practice relative to terrain, prevailing conditions, equipment, personal capabilities, personal safety and the safety of all other park users. This includes:

(A) Yielding the right-of-way to pedestrians and animals;

(B) Dismounting and walking in congested areas and posted walk zones;

(C) Slowing down and making presence well known in advance and using caution when overtaking other persons or animals;

ADMINISTRATIVE RULES

(D) Displaying adequate lighting during the hours of darkness, in compliance with ORS Chapters 814 to 816;

(E) Using caution when approaching turns or areas of limited sight distance;

(F) Not disturbing or harassing wildlife as provided in OAR 736-010-0055; and

(G) Operating in compliance with any additional requirements identified in ORS 814.488 when on public roads accessible by motor vehicles.

(2) A person may operate non-motorized cycles or similar devices on roads and trails in any park area, except where posted to specifically prohibit or conditionally restrict such activity.

(3) The director or designee may open or close roads and trails to the operation of non-motorized cycles or similar devices, based on an evaluation of factors related to the use of these devices including, but not limited to, the degree of conflict with other users, public safety, or damage to park resources.

(4) A person may not operate non-motorized cycles, scooters, or similar devices in any park area listed below, except where authorized by the director and posted specifically or conditionally to allow such activities:

(a) Off roads or trails;

(b) Within designated natural areas, natural forest areas, or natural area preserves except on roads open for motor vehicles; and

(c) On docks, piers, floats and connecting ramps.

(5) Individuals with mobility disabilities can use wheelchairs and manually-powered mobility aids, designed for use by individuals with mobility disabilities, to access any areas open to pedestrian use.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 814.400 - 814.489 & 814.600

Hist.: PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2011(Temp), f. & cert. ef. 3-24-11 thru 9-15-11

736-010-0030

Domestic Animals

(1) Domestic animals means those animals whose food and shelter are provided by a human custodian. Handler means any person who either brings a domestic animal into a park area or keeps a domestic animal in a park area.

(2) A handler shall either confine the domestic animal or keep it on a leash not more than six feet long. The animal shall be under physical control at all times.

(3) A handler is responsible for the animal's behavior and containment and for the removal of the animal's waste while in the park area.

(4) With the exception of service animals and miniature horses as described in section (9) below, domestic animals are prohibited in the following locations:

(a) Park area buildings and structures;

(b) Bodies of water, except hunting dogs are allowed in those areas described in OAR 736-010-0055;

(c) Beaches adjacent to designated for swimming areas; and

(d) Other areas where posted.

(5) The park manager or an enforcement officer may take any measure deemed necessary (including the removal of the animal from the park area) to protect park resources or to prevent interference by the animal with the safety, comfort, or well being of any person in the park area.

(6) Park employees may seize any domestic animal running at large in a park area and release to an animal pound or animal control officer.

(7) The park manager may designate a portion of a park area as open to dogs off leash for the purposes of training dogs, open field trials, or exercising dogs, when the handler is in control of the dog.

(8) With the exception of miniature horses as described in section (9) below, a person may not ride, drive, lead, or keep a horse or other large animal in any park area, except on such roads, trails, or areas designated for that purpose. A handler may not hitch or confine a horse or other large animal in a manner that may cause damage to any tree, shrub, improvement or structure.

(9) The park manager or his or her designee will allow the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability and if, in the park manager or designee's assessment, the miniature horse can reasonably be allowed in a specific facility based on consideration of the following:

(a) The type, size and weight of the miniature horse and whether the facility can accommodate these features;

(b) Whether the handler has sufficient control of the miniature horse;

(c) Whether the miniature horse is housebroken; and

(d) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

Stat. Auth. ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; Renumbered from 736-015-0050, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07; PRD 2-2011(Temp), f. & cert. ef. 3-24-11 thru 9-15-11

Rule Caption: Amend Division 19 Land Acquisition and Exchange rules to address changes in OPRD's acquisition strategy.

Adm. Order No.: PRD 3-2011

Filed with Sec. of State: 3-30-2011

Certified to be Effective: 3-30-11

Notice Publication Date: 11-1-2010

Rules Adopted: 736-019-0070

Rules Amended: 736-019-0000, 736-019-0020, 736-019-0040, 736-019-0060, 736-019-0080, 736-019-0100, 736-019-0120

Subject: Amend the OAR 736-019 to reflect changes in OPRD's land acquisition strategy and process. Changes include defining "overwhelming public benefit," adding criteria for exchange of land either initiated by OPRD or by Other Parties, adding requirement for notification to Department of Administrative Services of land transfers from OPRD to Other Parties, establishing an internal environmental review, appraisal standards, and direction on the Department working collaboratively with stakeholders on land acquisitions.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-019-0000

Scope and Purpose

This division implements the statutory mandate in ORS 390.112 to describe criteria for the acquisition and development of new historic sites, parks and recreation areas. The purpose of this division is to establish a methodology for consideration of land acquisition and land exchange that will allow the Parks and Recreation Department to:

(1) Identify and acquire the best representative landscapes and most significant sites in Oregon for the purpose of protecting the State's most valuable natural, scenic, cultural, historic, and recreational resources;

(2) Ensure the general public's access to and enjoyment of these sites as compatible with OPRD cultural and sustainability policies;

(3) Ensure that the themes of Oregon's natural and human history are woven into the master development plans of new and existing properties; and

(4) Foster appreciation and enjoyment of outdoor recreation resources by conserving, developing and maintaining waterways, scenic roads, high-way corridors, trails and State recreation areas.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 & 390.121

Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0020

Definitions

As used in this division, unless the context requires otherwise:

(1) "Acquisition" means obtaining title to real property or any right or interest therein, or an interest in timber or other assets, by purchase, agreement, donation, exchange, gift, devise, or by exercise of eminent domain.

(2) "Commission" means the State Parks and Recreation Commission.

(3) "Department" means the State Parks and Recreation Department.

(4) "Director" means the State Parks and Recreation Department Director.

(5) "Exchange" means the simultaneous, mutual transfer between willing parties of one or more interests in land, timber, other assets of equal value, or any combination thereof.

(6) "Other assets" means cash or forms of consideration other than land or an interest in timber, including but not limited to access rights, mineral rights, and water rights.

(7) "Third party" means any person other than the Department or the owner(s) of property that is the subject of an acquisition or exchange.

(8) "Overwhelming public benefit" means a Commission determination in the approval of a property exchange that accounts for the natural, scenic, cultural, historic, recreational, and operational benefits of a propos-

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al that are likely to be above and beyond the monetary value of the exchange.

Stat. Auth.: ORS 390.121 & 390.124
Stats. Implemented: ORS 390.112 & 390.121
Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0040

Policy

The Department shall use sound principles of real estate acquisition when acquiring or exchanging real property, comply with all federal and state laws pertaining to real property acquisition, and ensure the prudent use of public monies in its real property transactions. The Department aspires to:

- (1) Ensure that the discharge of its fiduciary responsibility for the use of public funds receives the highest priority.
- (2) Seek to preserve the public's confidence in our business practices and stewardship of real estate assets.
- (3) Conduct real estate transactions in an atmosphere of openness, honesty and integrity with land owners and the public, and maintain the confidentiality of such transactions to the extent allowed by law when it serves the public interest or to avoid harm to private citizens' interests.
- (4) Balance the need for and benefits of public open space with impacts on local tax revenue and private economic opportunity.

Stat. Auth.: ORS 390.121 & 390.124
Stats. Implemented: ORS 390.112 & 390.121
Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0060

Criteria for Acquisition

(1) The Department will:
(a) Establish and maintain a list of properties and areas of interest. The Department may acquire properties on that list as they become available, subject to approval and the availability of funds.

(b) Consider park master plans adopted pursuant to ORS 195.120, the State Trails Plan, the Willamette Greenway Plan or other plans adopted by the Commission that identify certain land acquisitions as desired and needed.

(c) Acquire properties as specifically directed by Acts of the Oregon Legislature.

(d) Acquire other properties that contribute to the established goals of the Department but were not previously included on a list of properties of interest or identified in a Department plan.

(2) The purpose of the Department and the public's interests are served when an acquisition satisfies one or more of the following objectives:

(a) Protects areas of outstanding natural, scenic, cultural, historic and recreational significance for the enjoyment and education of present and future generations.

(b) Consolidates state park parcels, trail systems or greenways so that more efficient management and administration of the state park system is made possible.

(c) Provides a buffer to adjacent or nearby development that may diminish the recreation or conservation values of a state park parcel.

(d) Provides access to recreation areas for management or protection of state park parcels, and

(e) Addresses opportunities that may be lost to the Department if acquisition is delayed.

(3) The acquisition or exchange of all real property shall be consistent with the Department's purpose and its long-range planning goals, and shall be prioritized through a rating system. The rating system will evaluate an acquisition or exchange's significance as it relates to the Department's mission, development and operational costs, geographic distribution, diversity of values, public demand, and other factors connected to its feasibility as a state park. The Commission will periodically review the rating system.

(4) The Department will look favorably at opportunities for acquisitions and exchanges that enhance the overall management of existing park lands.

Stat. Auth.: ORS 390.121 & 390.124
Stats. Implemented: ORS 390.112 & 390.121
Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0070

Criteria for Exchange

(1) In considering an acquisition that includes a sale or exchange of real property owned by the Department, the Department will:

(a) Apply all elements of the "Criteria for Acquisition" provided in OAR 736-019-0060, and

(b) Apply the provisions of sections (2) or (3) of this rule.

(2) For exchanges that it initiates, the Department will:

(a) Identify for the Commission the reasoning and justification for an exchange based on the Department's mission, strategies, objectives, and work plan, and

(b) Undertake exchanges only if there is a significant benefit to the Department. Examples of a significant benefit to the Department include, but are not limited to:

(A) Adding properties that adjoin properties owned by the Department,

(B) Improving the Department's access to one or more properties owned or operated by the Department,

(C) Resolving in-holdings,

(D) Property line adjustments that facilitate operations or management, and

(E) Acquiring identified property needs.

(3) For exchanges that a party other than the Department initiates, the Department will:

(a) Determine whether the exchange aligns with the Department's mission, strategies, objectives, and work plan,

(b) Inquire whether the local county and local communities support the exchange,

(c) Determine whether the exchange will accommodate public use and access, and be in the best interest of the Department,

(d) Submit an Agency Surplus Real Property Notification to the Department of Administrative Services and request the notification of adjacent cities, appropriate counties and all state agencies for the sale, transfer, or exchange of any real property right from Department ownership.

(e) Require the proponent provide the Department a written environmental review for all lands the Department is to receive in the exchange. The Department may determine that an environmental report provides information that further requires that the proponent to provide additional environmental assessment, and

(f) Require that all proposals made to the Department be in writing with adequate detail for the Department to evaluate the transaction for:

(A) Natural resource impacts and protection,

(B) Cultural resource impacts and protection, and

(C) Overwhelming public benefit to the parks system.

(4) To approve an exchange that a party other than the Department initiates, the Commission shall determine that the proposed exchange provides an overwhelming public benefit to the Oregon State Park system, its visitors, and the citizens of Oregon. The Commission has sole discretion to determine whether a proposal provides an overwhelming public benefit to the Oregon State Park system, its visitors, and citizens, which is resounding, clear and obvious. An overwhelming public benefit to the Oregon State Park system, may include, but is not limited to, an exchange in which the Department receives:

(a) One or more properties in areas of interest listed pursuant to OAR 736-019-0060(1)(a),

(b) An endowment for long-term stewardship that provides significant and meaningful stewardship resources to the Department, or

(c) Other contributions to the Oregon State Park system, beyond the property to be received, which the Commission determines when combined with the property to be received by the Department, and when weighed against the property to be transferred out of the Oregon State Park system, along with all of the Departments transaction costs, will result in an overwhelming public benefit to the Oregon State Park system.

Stat. Auth.: ORS 390.121 & 390.124
Stats. Implemented: ORS 390.112 & 390.121
Hist.: PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0080

Sources of Funding

The Department will:

(1) Purchase lands with appropriations granted by the Legislature.

(2) Use proceeds from land sales to purchase other lands pursuant to ORS 390.121(3).

(3) Accept donated private funds and donated lands.

(4) Seek state, federal and private grants for land purchases when appropriate.

(5) Employ land exchanges when the land traded away is less suitable for open space and recreation than the land received.

Stat. Auth.: ORS 390.121 & 390.124
Stats. Implemented: ORS 390.112 & 390.121
Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

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736-019-0100

Acquisition Practices

- (1) The Department will:
 - (a) Engage in land purchases and land sales in which the value of the land is established by an up-to-date appraisal prepared by an independent professional appraiser or a qualified government employee.
 - (b) Obtain an independent review of appraisals when the appraised value exceeds \$250,000.00.
 - (c) Consult with local taxing entities of government when a land purchase has potential to cause a significant loss of property tax revenue.
 - (d) Seek to purchase from willing sellers as the preferred method of buying land.
 - (e) Exercise the greatest of restraint in using the power of eminent domain consistent with the spirit and intent of the laws authorizing such power.
 - (f) Acquisitions and exchanges shall be made only with approval of the Commission.
 - (g) The Director may pay up to \$10,000.00 for an option or earnest money agreement if there is a high degree of certainty, without committing a future Legislature, that the funds to complete the subject purchase will be forthcoming. Option payments in excess of \$10,000.00 shall only be made if approved by the Commission.
 - (h) The Department will utilize sound business principles in securing appraisals and conducting negotiations, and shall complete its due diligence in connection with all real property acquisitions and exchanges, including the request for and review of title searches, hazardous material assessments, agreements with third parties intended to facilitate an acquisition by the Department, and any other documents necessary to make the best decision regarding a land purchase or exchange.
 - (i) Appraisals upon which the Department makes an offer must be dated as close in time to the expected closing as possible, and not be older than one year.
 - (j) The Department will require the appraiser to consider the new, anticipated, or intended use, income, or zone, if the Grantee proposing an exchange or sale intends, or is likely to pursue, a different highest and best use than the Department's current use or zone.
 - (k) Submit an Agency Surplus Real Property Notification to the Department of Administrative Services and request the notification of adjacent cities, appropriate counties and all state agencies for the sale, transfer, or exchange of any real property right from Department ownership.
 - (l) Conduct a visual inspection and check the records for historical uses of any land considered for acquisition. If either the visual inspection or historic records provide information the Department determines merits further investigation of environmental issues, the Department will engage in additional environmental review.
 - (2) In addition to the practices describe in section (1) of this rule, when acquiring ownership of or interests in lands abutting, adjacent or contiguous to the ocean shore for state recreation areas or access where such lands are held in private ownership, the department will also consider the criteria provided in ORS 390.630.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 & 390.121

Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

736-019-0120

Working with Other Parties

The Department may collaborate on land acquisitions with other parties, including county governments, state and federal agencies, non-profit organizations, private corporations, landowners, and private land trusts. It is the policy of the Department to seek out and engage in land acquisition collaborations when they are of mutual benefit and further the attainment of shared values and goals. In general, in addition to compliance with the rest of this division, the Department considers the following elements to be important to successful collaboration on land acquisitions:

- (1) Acquisition opportunities must align with the goals, strategies, and priorities for land acquisition established by the Commission;
- (2) The potential partner engages with the Department early in the process, and frequently throughout, including full disclosure and transparency on all of the details of the proposal. The Department commits to treat partners in the same way, both for projects brought to it, and where the Department seeks out a collaborator;
- (3) An understanding by the potential partner that discussions with the Department staff are preliminary and that only the Commission may approve a land acquisition;

(4) The Department is very willing to give attention and publicity to projects and the accomplishments of partners and believes its participation in a deal can add to that;

(5) A demonstration that the county, local community, interested state and federal agencies support the acquisition, and that the acquisition accommodates public use and access;

(6) An understanding by the potential partner that the Department must undertake real estate transactions in a transparent manner and involve willing sellers who are paid fair market value and only after due diligence has been done, and risks adequately addressed; and

(7) A recognition that the Department is subject to specific and extensive state statutes, rules, and public accountability.

Stat. Auth.: ORS 390.121 & 390.124

Stats. Implemented: ORS 390.112 390.117(5) & 390.121

Hist.: PRD 11-2004, f. & cert. ef. 9-15-04; PRD 3-2011, f. & cert. ef. 3-30-11

Secretary of State, Elections Division Chapter 165

Rule Caption: Adopting and amending rules involving contested case hearings.

Adm. Order No.: ELECT 7-2011

Filed with Sec. of State: 4-8-2011

Certified to be Effective: 4-8-11

Notice Publication Date: 3-1-2011

Rules Adopted: 165-001-0009, 165-001-0016, 165-001-0034, 165-001-0036

Rules Amended: 165-001-0015, 165-001-0040

Subject: OAR 165-001-0009 is proposed for adoption to incorporate into rule definitions of "Charging Document" and "Agency" when used in division 1.

OAR 165-001-0015 is proposed for amendment to clarify and make uniform the rule language.

OAR 165-001-0016 is proposed for adoption to require an individual requesting a contested case hearing in person or by telephone to submit to the Secretary of State Elections Division a written response to the allegations in the charging document.

OAR 165-001-0034 is proposed for adoption to require an individual submitting notarized testimony in lieu of a contested case hearing to submit to the Secretary of State Elections Division a written response to the allegations in the charging document.

OAR 165-001-0036 is proposed for adoption to allow an Election Division employee to represent the agency in certain contested case hearings.

OAR 165-001-0040 is proposed for amendment to prohibit any evidence from being presented at a contested case hearing that was not raised in the charging document or in the written response to the charging document.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-001-0009

Definitions

Unless the context requires otherwise, the following definitions apply to this Division:

(1) "Charging document" means any document issued by the Secretary of State, Elections Division stating that any person or government agency has violated the laws or rules within this Agency's jurisdiction.

(2) "Agency" means Secretary of State, Elections Division and any employee thereof.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.232 & 260.995

Hist.: ELECT 7-2011, f. & cert. ef. 4-8-11

165-001-0015

Notice of Opportunity for Hearing

When the Secretary of State proposes to impose a civil penalty or find a violation of an election law, or both, under ORS 260.232 or 260.995, the Secretary of State shall cause a notice to be served by certified mail and regular mail on the person(s) subject to the penalty. The notice shall include:

(1) A statement of the person's right to a hearing before an Administrative Law Judge with the Office of Administrative Hearings.

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(2) A statement that if the person desires a hearing, the agency must be notified within the number of days provided by statute from the date of receiving the notice.

(3) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) A reference to the particular sections of the statutes and rules involved.

(5) A short and plain statement of the matters asserted or charged as a violation.

(6) A statement of the amount of penalty that may be imposed.

(7) A statement that the person may be represented by counsel at the hearing.

(8) If the person is an agency, corporation or an unincorporated association, that such person must be represented by an attorney licensed in Oregon, unless the person is a political committee which may be represented by any individual identified as the candidate, treasurer, alternate transaction filer, person designated as the correspondence recipient or director in the most recent statement of organization filed with the filing officer.

(9) A statement that the record of the proceeding to date, including the agency file or files on the subject of the contested case, automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

(10) A statement that the person against whom a penalty may be assessed need not appear in person at a hearing held under ORS 260.232 or 260.995, but instead may submit written testimony and other evidence, sworn to before a notary public, to the Secretary of State for entry in the hearing record. Such documents must be received by the Secretary of State not later than three business days prior to the hearing as provided by 260.232(6).

(11) A statement that unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

Stat. Auth.: ORS 183.090, 183.470 & 246.150

Stats. Implemented: ORS 183.341, 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88; ELECT 27-1993, f. & cert. ef. 7-1-93; ELECT 9-1999, f. & cert. ef. 9-29-99; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09; ELECT 7-2011, f. & cert. ef. 4-8-11

165-001-0016

Requesting a Hearing

(1) If a party wishes to request an in person or telephone hearing to contest the allegations in the charging document, they must submit to the Agency a written response, referred to as an "answer," to the allegations in the charging document not later than the deadline to request a hearing stated in the charging document.

(a) The answer must include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations, including any relevant mitigating circumstance.

(b) A general denial is not sufficient to constitute an answer.

(2) An answer not including the information required by this rule may be disregarded and a notice of default may be issued in accordance with OAR 165-001-0025 as if no answer had been filed.

(3) Except for good cause shown to the administrative law judge, factual matters alleged in the charging document and not denied in the answer will be deemed admitted by the party.

(4) The failure of the party to raise a mitigating circumstance in the answer is a waiver of such mitigating circumstance.

(5) The party bears the burden of proof to show that all or part of the penalty should be mitigated based on a mitigating circumstance.

(6) Any new facts or defenses alleged in the answer will be deemed denied by the Agency.

(7) Evidence will not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or the answer as filed.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.232 & 260.995

Hist.: ELECT 7-2011, f. & cert. ef. 4-8-11

165-001-0034

Notarized Testimony in lieu of Hearing

(1) If a party wishes to contest the allegations in the charging document, but does not wish to request an in person or telephone hearing, the party may submit notarized testimony in lieu of a hearing.

(2) The notarized testimony must be filed with the Agency not later than the deadline to request a hearing stated in the charging document.

(3) The notarized testimony must:

(a) Include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations, including any relevant mitigating circumstance. A general denial is not sufficient. Notarized testimony not including the information required by this rule may be disregarded and a notice of default may be issued in accordance with OAR 165-001-0025 as if no notarized testimony had been filed.

(b) Include a signed and completed Notarized Testimony form.

(c) Be notarized by a licensed Notary Public.

(4) After the party submits notarized testimony, the Agency may submit notarized testimony to the Office of Administrative Hearings and the party. If the Agency submits notarized testimony, it will be transmitted via email to the Office of Administrative Hearings and the party. The Agency may mail its notarized testimony to the party's last known address if the party's email address is unknown or does not accept the Secretary of State's email.

(5) The party may, but is not required to, respond to the Agency testimony by submitting rebuttal notarized testimony.

(a) Rebuttal notarized testimony is limited to issues raised in the original notarized testimony and the Agency's testimony.

(b) Rebuttal notarized testimony must be notarized by a licensed Notary Public.

(c) The rebuttal notarized testimony must be received by the Agency not later than five business days from the date of service of the Agency's testimony (the date the testimony was emailed or mailed).

(d) The notarized testimony hearing record is deemed closed the day after the deadline for the person to submit rebuttal testimony.

(6) If a person submits notarized testimony in lieu of requesting an in person or telephone hearing, the person is waiving their right to an in person or telephone hearing.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.232 & 260.995

Hist.: ELECT 7-2011, f. & cert. ef. 4-8-11

165-001-0036

Employee Representation at Contested Case Hearings

(1) The Agency's goal in contested case hearings is to have a full and accurate record upon which the Agency can make the best decision. To help ensure a full record, the Agency allows employees to represent the Agency in certain contested case hearings. The employee representative's role is to represent the Agency in a way that supports objective fact finding and encourages an open, fair, and efficient process.

(2) An Agency employee may represent the Agency in contested case hearings involving violations of ORS 260.035, 260.039, 260.041, 260.042, 260.044, 260.054, 260.055, 260.057, 260.076, 260.078, 260.083, 260.102, 260.112, 260.118, and 260.735.

(3) The representative's responsibilities include, but are not limited to:

(a) Presenting evidence;

(b) Asking questions of all witnesses;

(c) Presenting information about the facts, and advocating for staff's position surrounding the facts;

(d) Presenting information on how the facts apply to the statutes or rules directly related to the issues in the contested case;

(e) Presenting information comparing Agency actions in similar situations;

(f) Presenting information about the literal meaning of the statutes or rules that apply to the issues in the contested case; and

(g) Presenting information about the admissibility of evidence or the correctness of procedures being followed.

(4) The employee representative may not make legal arguments. "Legal arguments" include arguments on:

(a) The jurisdiction of the Agency to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Agency; and

(c) The application of court precedent to the facts of the particular contested case proceeding.

(5) When an employee represents the Agency in a contested case hearing, the presiding officer will advise the employee representative of the way in which objections may be made. This advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objections. If the objections involve legal argument, the presiding officer will provide reasonable opportunity for the employee representative to consult legal counsel and permit legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.232 & 260.995

Hist.: ELECT 7-2011, f. & cert. ef. 4-8-11

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165-001-0040

Evidentiary Rules

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(3) All offered evidence, not objected to, will be received by the administrative law judge subject to the administrative law judge's power to exclude irrelevant, immaterial or unduly repetitious matter.

(4) Evidence objected to may be received by the administrative law judge. If the administrative law judge does not rule on its admissibility at the hearing, the administrative law judge shall do so either on the record before a proposed order is issued or in the proposed order.

(5) The administrative law judge shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the agency or court to determine whether the evidence was properly excluded. The administrative law judge shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The administrative law judge may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

(6) Pursuant to OAR 165-001-0016, evidence may not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or the answer.

Stat. Auth.: ORS 246.150, 260.232 & 260.995

Stats. Implemented: ORS 183.450, 183.470, 260.232 & 260.995

Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88;

ELECT 9-1999, f. & cert. ef. 9-29-99; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09; ELECT 7-2011, f. & cert. ef. 4-8-11

Rule Caption: Amendment to the 2010 Campaign Finance Manual.

Adm. Order No.: ELECT 8-2011

Filed with Sec. of State: 4-8-2011

Certified to be Effective: 4-8-11

Notice Publication Date: 3-1-2011

Rules Amended: 165-012-0005

Subject: This proposed amendment revises the 2010 Campaign Finance Manual by updating the hearing procedures used for a late or insufficient filing to require an individual requesting a contested case hearing in person or by telephone to submit to the Secretary of State Elections Division a written response to the allegations in the charging document. Additionally, the hearing procedures are proposed for amendment to require an individual submitting notarized testimony in lieu of a contested case hearing to submit to the Secretary of State Elections Division a written response to the allegations in the charging document.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-012-0005

Designating the Campaign Finance Manual and Forms; Late Penalty Matrix

(1) Pursuant to ORS 260.156, the Secretary of State designates the *2010 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

(2) The following amendments to the *2010 Campaign Finance Manual* will apply to all ORESTAR late and insufficient penalty cases under ORS 260.232. The amendments to this rule with the exception of sections (7) and (9) go into effect upon the adoption of this rule. Sections (7) and (9) apply to late or insufficient cases occurring May 2011 forward.

(3) Page 64 right column, replace all paragraphs under the heading Late and Insufficient Penalty Cases (ORS 260.232) with the following:

(a) If the Secretary of State determines that a committee is in violation of Oregon election law for a late or insufficient filing, the treasurer, and candidate, if applicable, of the committee is sent a notice of proposed civil penalty (the charging document) that informs them of the potential civil penalty and provides them with an opportunity to request a hearing. This notice is sent by both certified and regular mail to the committee treasurer or, in the case of a candidate committee, by both certified and regular mail to the candidate with a copy by regular mail to the treasurer, and correspondence recipient, if applicable.

(b) Late and insufficient violations will be processed by calendar month. Each case for a given month will include late violations (transactions that are filed late in that particular month) and insufficient violations

(transactions that are not sufficiently corrected by the exam response due date in that particular month.)

(c) For example, a transaction is due on April 15, 2009. The transaction isn't filed until May 1, 2009. This violation will be part of the May case.

(d) A transaction is identified as insufficient on an exam letter, with a response due date of May 10, 2009. The transactions isn't corrected until May 15, 2009, this violation will also be part of the May case.

(e) If the total calculated penalty for a case is less than \$50, a proposed penalty will not be issued and there will be no violation found.

(f) If a person is not going to contest the proposed penalty, payment may be made payable to the Secretary of State and mailed to the Elections Division prior to the issuance of a default final order or not later than 60 days after the default final order is issued.

(4) Page 65 left column, replace all language beginning with heading Request for Hearing through the language under the heading Hearing by Telephone located in the right column with the following:

(a) STEP ONE: RESPONDING TO PROPOSED PENALTY NOTICE.

(A) When a person receives a proposed penalty notice, they can either pay the penalty, or contest the charges by submitting notarized testimony in lieu of a hearing or requesting an in person or telephone hearing.

(B) To pay the penalty the following must occur:

(i) Payment is made payable to the Secretary of State.

(ii) Payment may be mailed to the Elections Division prior to the issuance of the default final order, at any time after the proposed penalty notice is issued.

(iii) Payment must be received not later than 60 days after the default final order is issued.

(iv) If necessary, the person may contact the Elections Division at 503-986-1518 to discuss payment plan options.

(C) To submit notarized testimony in lieu of an in person or telephone hearing to contest the case the following must occur:

(i) The person must submit a signed Hearing Request Form and an answer to the violations within 20 days of the receipt of the certified mail notice of proposed civil penalty. If the certified letter is refused or left unclaimed at the post office, the 20 day period begins on the day the post office indicates it has given first notice of the certified letter.

(ii) The answer must include an admission or denial of each factual matter alleged in the proposed penalty notice.

(iii) The answer must identify any mitigating circumstance that applies and indicate specifically what facts or transactions the mitigating circumstance applies to.

(iv) If the person has evidence of a mitigating circumstance, or other relevant evidence, this can be submitted with the answer as exhibits.

(v) Except for good cause shown to the administrative law judge, factual matters alleged in the penalty notice and not denied in the answer will be deemed admitted by the party.

(vi) The testimony must be notarized by a licensed Notary Public.

(vii) A worksheet is available on the back of the Hearing Request Form and may be used to complete the answer. Additional copies may be obtained by emailing your request to elec-hearings@sos.state.or.us or by contacting the Elections Division at 503-986-1518.

(viii) The testimony may be mailed to the Elections Division at 255 Capitol St NE, Ste 501, Salem OR 97310 or may be faxed to 503-373-7414.

(D) To request an in person or telephone hearing to contest the case the following must occur:

(i) The person must submit a signed Hearing Request Form and an answer to the violations within 20 days of the receipt of the certified mail notice of proposed civil penalty. If the certified letter is refused or left unclaimed at the post office, the 20 day period begins on the day the post office indicates it has given first notice of a certified letter.

(ii) The person must elect whether or not they want the hearing by telephone or in person on the Hearing Request Form, and sign where indicated.

(iii) The answer must include an admission or denial of each factual matter alleged in the proposed penalty notice.

(iv) The answer must identify any mitigating circumstance that applies and indicate specifically what facts or transactions the mitigating circumstance applies to.

(v) If the person has evidence of a mitigating circumstance, or other relevant evidence, this can be submitted with the answer as exhibits.

(vi) Except for good cause shown to the administrative law judge, factual matters alleged in the penalty notice and not denied in the answer will be deemed admitted by the party.

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(b) **STEP TWO: CONTESTED CASE PROCESS** — If a person submits the Hearing Request Form, the hearing will be conducted by an administrative law judge with the Office of Administrative Hearings through one of the following processes:

(A) **NOTARIZED TESTIMONY PROCESS** — If the person has timely submitted the signed Hearing Form designating the submission of notarized testimony, the Elections Division will refer the case and forward the person's notarized testimony to the Office of Administrative Hearings. The following process then applies:

(i) **When the Elections Division Submits Testimony** — The Elections Division may submit notarized testimony (and any exhibits) to the Office of Administrative Hearings and to the person that filed the notarized testimony. The Elections Division's notarized testimony will be sent via email to the email address provided on the request form. The Secretary of State, Elections Division may mail its notarized testimony to the party's last known address if the party's email address is unknown or does not accept the Secretary of State's email.

(ii) **Opportunity for Rebuttal Testimony** — The person may, but is not required to, respond to the Elections Division testimony by submitting rebuttal notarized testimony. The rebuttal testimony is limited to issues raised in the person's original testimony and the Elections Division's testimony. The rebuttal testimony must be received not later than five business days from the date of service of the Division's testimony (the date the testimony was emailed or mailed). The notarized testimony "hearing" is deemed closed the day after the deadline for the person to submit rebuttal testimony.

(B) **IN PERSON OR TELEPHONE HEARING PROCESS** — If the person has timely submitted the signed Hearing Form designating an in person or telephone hearing, the following process applies:

(i) **Scheduling a Hearing** — The Elections Division will refer the hearing request, including the party's answer and hearing request form, to the Office of Administrative Hearings. The Office of Administrative Hearings will schedule a hearing not later than 45 days after the deadline for requesting a hearing. A 15 day extension may be granted if requested in writing by the person subject to the civil penalty.

(ii) **Submitting Exhibits** Not less than five business days prior to the commencement of the hearing, each party, including the Elections Division, must deliver copies of the exhibits it intends to offer into evidence at the hearing. Exhibits must be delivered to the Administrative Law Judge, all parties, and the Elections Division. Delivery of the exhibits may be accomplished by any of the following means, or by other means of similar nature: Hand delivery; First class or certified mail; Facsimile; Professional delivery service; or Emailed in a pdf format to elec-hearings@sos.state.or.us. Nothing precludes any party or the Elections Division from seeking to introduce documentary evidence in addition to evidence described above during a telephone or in person hearing. The Administrative Law Judge shall receive such evidence, subject to the applicable rules of evidence, only if inclusion of the evidence in the record is necessary to conduct a full and fair hearing.

(iii) **Conduct of In Person or Telephone Hearing** — If the hearing is in person, it will be conducted at the time scheduled and held in a hearing room at the Office of Administrative Hearings in Salem. If the hearing is by telephone, the parties will call the phone number provided in the Notice of Hearing sent by the Office of Administrative Hearings. The hearing will be presided over by an Administrative Law Judge. The Administrative Law Judge will describe the hearing process at the beginning of each hearing. The parties will then be given the opportunity to give opening statements, present and examine witnesses, and give closing statements.

(iv) **Opportunity to Opt Out of In Person or Telephone Hearing** — If a person requests an in person or telephone hearing and the hearing is scheduled by the Office of Administrative Hearings, then subsequently decides they do not want to appear at the hearing, but still wants to contest the penalty, the person may submit notarized testimony and other evidence for entry into the hearing record before the Administrative Law Judge. The Elections Division must receive the testimony no later than three business days before the day of the scheduled hearing. The Elections Division may submit notarized testimony. The testimony must be received by the Office of Administrative Hearings not later than 5:00 pm on the hearing scheduled date. If the Elections Division does not submit notarized testimony, the Agency file will become a part of the case file and establish the basis for liability. This process is separate and distinct from the Notarized Testimony process discussed above and applies only when a party requests an in person or telephone hearing and later decides not to appear at the hearing and instead provide notarized testimony and evidence.

(c) **STEP THREE: PROPOSED AND FINAL ORDERS.**

(A) **Proposed Order** — After the hearing is closed, the Office of Administrative Hearings sends the treasurer, candidate, and the Elections Division the administrative law judge's proposed order. The administrative law judge's proposed order will provide a deadline to file written exceptions to the proposed order. If the Elections Division chooses to amend the proposed order issued by the administrative law judge, the Elections Division will send an amended proposed order which will provide a deadline to file written exceptions to the amended proposed order.

(B) **Final Order** — After reviewing and considering the written exceptions, the Elections Division will issue a final order no later than 90 days after the hearing is closed. If the order imposes a civil penalty, the party has 60 days to pay the penalty or file an appeal. If necessary, the person may contact the Elections Division at 503-986-1518 to discuss payment plan options.

(d) **Judicial Review of a Final or Default Order** — After the issuance of a final order or default final order, a candidate or treasurer is entitled to judicial review of the order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days of the service date of the order.

(5) Page 65 right column, under heading Mitigating Circumstances, replace the first paragraph with the following: If an in person, telephone or notarized testimony hearing is requested and testimony is provided regarding the mitigating circumstance that directly caused the late or insufficient filing, the Administrative Law Judge and the Secretary of State may consider reducing in whole or in part, the civil penalty, based on the facts presented by the testimony.

(6) Page 66 right column, delete all language under headings Final Order and Default Final Order.

(7) Page 67 left column under the heading Penalties for Late Transactions, replace the paragraph with: The treasurer responsible for a late filed transaction is the treasurer of record at the time the transaction is due. The liability for the civil penalty remains with the treasurer, and the candidate, if applicable, even if the late transaction is filed by the designated alternate transaction filer.

(8) Page 68 left column under the heading Penalty Matrix Late Filings should be replaced with the following: Penalties may be assessed for any contribution or expenditure transaction that is filed late or any cash balance adjustment transaction. A transaction is considered late in any of the following circumstances:

(a) a transaction is not filed by the due date for the transaction;

(b) a change is made to the name of the contributor or payee after the transaction due date, resulting in an entirely different contributor or payee being associated with the transaction (the transaction is considered late from the transaction due date to the date the amended transaction changing the contributor or payee is filed);

(c) a change is made to the date of the transaction resulting in a due date that is prior to the date the transaction was originally filed (the transaction is considered late from the date the transaction should have been filed to the date the transaction was originally filed);

(d) a change (increase or decrease) is made to the amount of a previously reported transaction after the transaction due date (the amount of the change is late from the transaction due date to the date the amended transaction changing the amount is filed) no penalty will be imposed for a change in the amount of an expenditure made by an agent transaction;

(e) a previously reported transaction is deleted after the transaction due date (the transaction is considered late from the transaction due date to the date the transaction deletion is filed);

(f) a cash balance adjustment transaction is filed because the committee is unable to reconcile the calculated cash balance based on transactions filed with the Secretary of State with the committee's bank balance; or

(g) The transaction type is amended from any transaction type other than a contribution or expenditure to a contribution or expenditure, and the original transaction was filed after the deadline (the transaction is considered late from the transaction due date to the date the original transaction is filed).

(9) Page 69 under the heading Maximum Penalties should be replaced with the following:

(a) The maximum penalty for each late transaction, except for a change in a transaction amount, is 10% of the amount of the transaction. The maximum penalty for a change in a transaction amount is 10% of the change in amount.

(b) The maximum penalty for a late Certificate of Limited Contributions and Expenditures is \$100.

(c) The maximum penalty for each cash balance adjustment is 10% of the amount of the transaction.

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(d) The maximum penalty for a late Statement of Independent Expenditures (form PC 10) is 10% of the total amount reported on form PC 10.

(10) Page 71 right column under the heading Penalties should be replaced with the following:

(a) for all missing or insufficient items, other than those listed below:

\$10 per item;

(b) failure to provide the terms of a loan: **1% of the loan;**

(c) Omitted or insufficient information submitted after the amendment deadline but prior to the deadline for a candidate or treasurer to request a hearing will result in a 50% per item reduction of the penalty, if the information is deemed sufficient. If a public hearing is requested, the omitted or insufficient information may be submitted up to the date of the hearing and if deemed sufficient will result in a 50% per item reduction of the penalty.

(11) Amend all references in the 2010 Campaign Finance Manual regarding the requirement for a candidate to file a candidate committee from \$350 to \$750, including Pages 13, 41, 59 and form SEL 220, Statement of Organization for Candidate Committee.

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

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

Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200

Hist.: SD 101, f. & cert. 12-3-75; SD 120, f. & cert. 12-21-77; SD 34-1980, f. & cert. 3-6-80; SD 28-1983, f. & cert. 12-20-83; SD 3-1986, f. & cert. 2-26-86; ELECT 32-1988(Temp), f. & cert. 8-26-88; ELECT 22-1989(Temp), f. & cert. 11-9-89; ELECT 19-1990, f. & cert. 6-4-90; ELECT 14-1992 (Temp), f. & cert. 6-10-92; ELECT 37-1992, f. & cert. 12-15-92; ELECT 34-1993, f. & cert. 11-1-93; ELECT 1-1995(Temp), f. & cert. 2-23-95; ELECT 15-1995, f. & cert. 12-18-95; ELECT 9-1996, f. & cert. 7-26-96; ELECT 5-1997, f. & cert. 3-24-97; ELECT 6-1997(Temp), f. & cert. 4-18-97; ELECT 15-1997, f. & cert. 12-31-97; ELECT 5-1998, f. & cert. 2-26-98; ELECT 8-1998, f. & cert. 6-2-98; ELECT 9-1998, f. & cert. 9-11-98; ELECT 13-1998(Temp), f. & cert. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. 3-1-99; ELECT 1-2000, f. & cert. 1-3-00; ELECT 3-2002, f. & cert. 3-13-02; ELECT 23-2003, f. & cert. 12-12-03; ELECT 13-2005, f. & cert. 12-30-05; ELECT 1-2007, f. & cert. 1-5-07; ELECT 2-2007(Temp), f. & cert. 5-2-07 thru 10-29-07; ELECT 4-2007(Temp), f. & cert. 7-16-07 thru 12-31-07; ELECT 13-2007, f. & cert. 12-31-07; ELECT 8-2009, f. & cert. 5-4-09; ELECT 16-2009, f. & cert. 7-30-09; ELECT 27-2009, f. & cert. 12-31-09; ELECT 3-2010, f. & cert. 4-22-10; ELECT 8-2011, f. & cert. 4-8-11

Rule Caption: Amendment to Penalty Matrix for other campaign finance violations.

Adm. Order No.: ELECT 9-2011

Filed with Sec. of State: 4-8-2011

Certified to be Effective: 4-8-11

Notice Publication Date: 3-1-2011

Rules Amended: 165-013-0010

Subject: This rule is proposed for amendment to update the Penalty Matrix for Campaign Finance Civil Penalty Election Law Violations to reflect that the maximum penalties allowed under ORS 260.995 will be assessed for violations contained in the penalty matrix. The proposed amendment also provides for a 50% reduction in penalty assessed if omitted or insufficient information for a violation of ORS 260.039(4), 260.042(4) or 260.118(3) is submitted.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-013-0010

Penalty Matrix for Other Campaign Finance Violations

(1) This penalty matrix applies to civil penalties for campaign finance violations not covered by the penalty matrices in the Campaign Finance Manual.

(2)(a) Spot Check Review. The Secretary of State, Elections Division, will hold exempt from disclosure as a public record any bank account number(s), credit card number(s) or social security number(s) received as required documentation in response to a request for documentation necessary to perform a spot check review in accordance with ORS 260.215(3).

(b) If a committee fails to provide documentation or provides insufficient documentation in response to a request for documentation necessary to perform a spot check review, each omitted or insufficient item is a violation of ORS 260.055(3).

(c) If the committee fails to provide sufficient documentation for a transaction by the deadline stated in the first spot check review letter, the Elections Division shall send a second review letter notifying the committee which transaction(s) lack sufficient documentation. The second review letter shall provide the committee a deadline for response.

(d) Omitted or insufficient information submitted after the deadline provided in the second review letter, but prior to the deadline for a candidate or treasurer to request a hearing will result in a 50% per item reduction

of the penalty. If a public hearing is requested, the omitted or insufficient documentation may be submitted up to the date of the hearing. In such an event, the candidate or treasurer will be entitled to a 50% per item reduction of the assessed penalty.

(e) The candidate or treasurer of record at the time the first spot check review letter is generated, along with the candidate if applicable, is responsible for submitting documentation for all transactions selected in the spot check review.

(f) For the purpose of imposing a civil penalty for a violation of ORS 260.055(3), the candidate of the principal campaign committee; and the treasurer of a political or petition committee are the parties responsible for the payment of any civil penalty.

(3) Mitigating Circumstances. Except as specifically provided in paragraph (2)(d), the only mitigating circumstances that will be considered in a campaign finance violation covered by this rule include:

(a) The violation is a direct result of a valid personal emergency of the candidate or treasurer. A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate or treasurer which caused the violation to occur. Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by the elections filing officer;

(c) The violation is the direct result of clearly-established fraud, embezzlement, or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity;

(d) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(e) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax); or

(f) The violation is the direct result of negligent record keeping by a former treasurer. Former treasurer refers to the person who was the treasurer of record at the time the transaction was filed or should have been filed.

(4)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.

(b) Omitted or insufficient information for a violation of ORS 260.039(4), 260.042(4) or 260.118(3) submitted prior to the deadline for a candidate or treasurer to request a hearing will result in a 50% reduction of the penalty. If a public hearing is requested, the omitted or insufficient information may be submitted up to the date of the hearing. In such an event, the candidate or treasurer will be entitled to a 50% reduction of the assessed penalty.

(c) For purposes of determining penalty amounts for violations of campaign finance violations covered by this rule Appendix A of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Appendix referenced is available from the agency.]

Stat. Auth.: ORS 246.150, 260.200

Stats. Implemented: ORS 260.200, 260.215, 260.232, 260.995

Hist.: ELECT 13-2000, f. 7-31-00, cert. 8-4-00; ELECT 22-2003, f. & cert. 12-5-03; ELECT 1-2004, f. & cert. 2-13-04; ELECT 16-2005, f. & cert. 12-30-05; ELECT 10-2006(Temp), f. & cert. 7-6-06 thru 1-2-07; ELECT 17-2006, f. & cert. 12-29-06; ELECT 14-2007, f. & cert. 12-31-07; ELECT 30-2009, f. & cert. 12-31-09; ELECT 9-2011, f. & cert. 4-8-11

Teacher Standards and Practices Commission

Chapter 584

Rule Caption: Amends Social Worker rules to reflect the Commission's intention to limit the ability to substitute teach at any level. Corrects reference to psychologists in 584-070-0421.

Adm. Order No.: TSPC 4-2011

Filed with Sec. of State: 4-14-2011

Certified to be Effective: 4-14-11

Notice Publication Date: 9-1-2010

Rules Amended: 584-070-0411, 584-070-0421, 584-070-0431

Subject: 584-070-0411: *Initial School Social Worker License* – Amends the license holder's capability to substitute at any level in

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any specialty. Wrong version of the rule was inadvertently filed. Correction implements language documented in the August 2010 commission meeting.

584-070-0421: *Continuing School Social Worker License* – Amends the license holder’s capability to substitute at any level in any specialty. Wrong version of the rule was inadvertently filed. Corrections implement language documented in the August 2010 commission meeting and will delete substitute teaching ability. This action will delete substitute teaching ability and delete reference to school psychologist licenses.

584-070-0431: *Transitional School Social Worker License for First Time Out-of-State Applicants* – Amends the license holder’s capability to substitute at any level in any specialty. Wrong version of the rule was inadvertently filed. Correction implements language documented in the August 2010 commission meeting and will delete substitute teaching ability.

Rules Coordinator: Lynn Beaton—(503) 373-0981

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; and

(b) Substitute counseling at any level.

(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 & 342.553

Hist.: TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11; TSPC 4-2011, f. & cert. ef. 4-14-11

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 Social Worker License is issued for five years and is renewable repeatedly under conditions specified below.

(3) The Continuing School Social Worker License is valid for:

(a) School social work at all age or grade levels; and

(b) Substitute counseling at any level.

(4) To be eligible for a Continuing School Social Worker 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

(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; TSPC 4-2011, f. & cert. ef. 4-14-11

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; and

(b) Substitute counseling at any level.

(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; TSPC 4-2011, f. & cert. ef. 4-14-11

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105-040-0030	11-28-2010	Amend	1-1-2011	111-050-0016(T)	2-11-2011	Repeal	3-1-2011
105-040-0060	11-28-2010	Amend	1-1-2011	111-050-0020	2-11-2011	Amend	3-1-2011
111-002-0005	12-13-2010	Amend(T)	1-1-2011	111-050-0020(T)	2-11-2011	Repeal	3-1-2011
111-005-00070	12-13-2010	Amend(T)	1-1-2011	111-050-0025	2-11-2011	Amend	3-1-2011
111-005-0010	12-13-2010	Amend(T)	1-1-2011	111-050-0025(T)	2-11-2011	Repeal	3-1-2011
111-005-0015	12-13-2010	Amend(T)	1-1-2011	111-050-0030	2-11-2011	Amend	3-1-2011
111-005-0020	12-13-2010	Amend(T)	1-1-2011	111-050-0030(T)	2-11-2011	Repeal	3-1-2011
111-005-0040	12-13-2010	Amend(T)	1-1-2011	111-050-0035	2-11-2011	Amend	3-1-2011
111-005-0042	12-13-2010	Amend(T)	1-1-2011	111-050-0035(T)	2-11-2011	Repeal	3-1-2011
111-005-0044	12-13-2010	Amend(T)	1-1-2011	111-050-0045	2-11-2011	Amend	3-1-2011
111-005-0046	12-13-2010	Amend(T)	1-1-2011	111-050-0045(T)	2-11-2011	Repeal	3-1-2011
111-005-0047	12-13-2010	Adopt(T)	1-1-2011	111-050-0050	2-11-2011	Amend	3-1-2011
111-005-0050	12-13-2010	Amend(T)	1-1-2011	111-050-0050(T)	2-11-2011	Repeal	3-1-2011
111-005-0055	12-13-2010	Adopt(T)	1-1-2011	111-050-0060	2-11-2011	Amend	3-1-2011
111-005-0060	12-13-2010	Suspend	1-1-2011	111-050-0060(T)	2-11-2011	Repeal	3-1-2011
111-005-0080	12-13-2010	Adopt(T)	1-1-2011	111-050-0065	2-11-2011	Amend	3-1-2011
111-010-0015	2-11-2011	Amend	3-1-2011	111-050-0065(T)	2-11-2011	Repeal	3-1-2011
111-010-0015	2-15-2011	Amend(T)	3-1-2011	111-050-0070	2-11-2011	Amend	3-1-2011
111-010-0015(T)	2-11-2011	Repeal	3-1-2011	111-050-0070(T)	2-11-2011	Repeal	3-1-2011
111-030-0005	2-11-2011	Amend	3-1-2011	111-050-0075	2-11-2011	Amend	3-1-2011
111-030-0005(T)	2-11-2011	Repeal	3-1-2011	111-050-0075(T)	2-11-2011	Repeal	3-1-2011
111-030-0010	2-11-2011	Adopt	3-1-2011	111-050-0080	2-11-2011	Amend	3-1-2011
111-030-0010(T)	2-11-2011	Repeal	3-1-2011	111-050-0080(T)	2-11-2011	Repeal	3-1-2011
111-030-0030	2-11-2011	Repeal	3-1-2011	111-070-0030	2-11-2011	Amend	3-1-2011
111-030-0035	2-11-2011	Adopt	3-1-2011	111-070-0030(T)	2-11-2011	Repeal	3-1-2011
111-030-0035(T)	2-11-2011	Repeal	3-1-2011	111-070-0040	2-11-2011	Amend	3-1-2011
111-030-0040	2-11-2011	Adopt	3-1-2011	111-070-0040(T)	2-11-2011	Repeal	3-1-2011
111-030-0040(T)	2-11-2011	Repeal	3-1-2011	111-080-0040	12-10-2010	Adopt	1-1-2011

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111-080-0045	12-10-2010	Adopt	1-1-2011	137-055-5240	3-31-2011	Amend(T)	5-1-2011
111-080-0045	2-15-2011	Amend(T)	3-1-2011	137-055-6120	3-31-2011	Amend(T)	5-1-2011
111-080-0050	12-10-2010	Adopt	1-1-2011	137-055-7020	3-31-2011	Amend(T)	5-1-2011
111-080-0050	2-15-2011	Amend(T)	3-1-2011	137-055-7040	3-31-2011	Amend(T)	5-1-2011
123-001-0700	12-1-2010	Amend	1-1-2011	137-055-7060	3-31-2011	Amend(T)	5-1-2011
123-001-0725	12-1-2010	Amend	1-1-2011	137-055-7080	3-31-2011	Suspend	5-1-2011
123-001-0750	12-1-2010	Amend	1-1-2011	137-055-7100	3-31-2011	Amend(T)	5-1-2011
123-042-0010	12-1-2010	Amend	1-1-2011	137-055-7120	3-31-2011	Amend(T)	5-1-2011
123-042-0020	12-1-2010	Amend	1-1-2011	137-055-7140	3-31-2011	Amend(T)	5-1-2011
123-042-0026	12-1-2010	Amend	1-1-2011	137-055-7160	3-31-2011	Amend(T)	5-1-2011
123-042-0036	12-1-2010	Amend	1-1-2011	137-055-7180	3-31-2011	Amend(T)	5-1-2011
123-042-0038	12-1-2010	Amend	1-1-2011	137-055-7190	3-31-2011	Amend(T)	5-1-2011
123-042-0045	12-1-2010	Amend	1-1-2011	137-078-0000	12-1-2010	Amend	1-1-2011
123-042-0055	12-1-2010	Amend	1-1-2011	137-078-0000(T)	12-1-2010	Repeal	1-1-2011
123-042-0065	12-1-2010	Amend	1-1-2011	137-078-0005	12-1-2010	Amend	1-1-2011
123-042-0076	12-1-2010	Amend	1-1-2011	137-078-0005(T)	12-1-2010	Repeal	1-1-2011
123-042-0122	12-1-2010	Amend	1-1-2011	137-078-0010	12-1-2010	Amend	1-1-2011
123-042-0132	12-1-2010	Amend	1-1-2011	137-078-0010(T)	12-1-2010	Repeal	1-1-2011
123-042-0155	12-1-2010	Amend	1-1-2011	137-078-0015	12-1-2010	Amend	1-1-2011
123-042-0165	12-1-2010	Amend	1-1-2011	137-078-0015(T)	12-1-2010	Repeal	1-1-2011
123-042-0175	12-1-2010	Amend	1-1-2011	137-078-0020	12-1-2010	Amend	1-1-2011
123-042-0180	12-1-2010	Amend	1-1-2011	137-078-0020(T)	12-1-2010	Repeal	1-1-2011
123-042-0190	12-1-2010	Amend	1-1-2011	137-078-0025	12-1-2010	Amend	1-1-2011
123-043-0025	12-1-2010	Amend	1-1-2011	137-078-0025(T)	12-1-2010	Repeal	1-1-2011
123-155-0000	1-3-2011	Am. & Ren.	2-1-2011	137-078-0030	12-1-2010	Amend	1-1-2011
123-155-0100	1-3-2011	Am. & Ren.	2-1-2011	137-078-0030(T)	12-1-2010	Repeal	1-1-2011
123-155-0150	1-3-2011	Am. & Ren.	2-1-2011	137-078-0035	12-1-2010	Amend	1-1-2011
123-155-0175	1-3-2011	Am. & Ren.	2-1-2011	137-078-0035(T)	12-1-2010	Repeal	1-1-2011
123-155-0200	1-3-2011	Am. & Ren.	2-1-2011	137-078-0040	12-1-2010	Amend	1-1-2011
123-155-0250	1-3-2011	Am. & Ren.	2-1-2011	137-078-0040(T)	12-1-2010	Repeal	1-1-2011
123-155-0270	1-3-2011	Am. & Ren.	2-1-2011	137-078-0041	12-1-2010	Adopt	1-1-2011
123-155-0300	1-3-2011	Am. & Ren.	2-1-2011	137-078-0041(T)	12-1-2010	Repeal	1-1-2011
123-155-0350	1-3-2011	Am. & Ren.	2-1-2011	137-078-0045	12-1-2010	Amend	1-1-2011
123-155-0400	1-3-2011	Am. & Ren.	2-1-2011	137-078-0045(T)	12-1-2010	Repeal	1-1-2011
123-450-0000	1-3-2011	Adopt	2-1-2011	137-078-0050	12-1-2010	Amend	1-1-2011
123-635-0050	1-3-2011	Repeal	2-1-2011	137-078-0050(T)	12-1-2010	Repeal	1-1-2011
137-020-0150	1-1-2011	Amend	2-1-2011	137-078-0051	12-1-2010	Adopt	1-1-2011
137-020-0160	1-1-2011	Amend	2-1-2011	137-078-0051(T)	12-1-2010	Repeal	1-1-2011
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137-050-0700(T)	1-4-2011	Repeal	2-1-2011	137-082-0220	4-1-2011	Amend	5-1-2011
137-050-0745	1-26-2011	Amend(T)	3-1-2011	137-082-0230	4-1-2011	Amend	5-1-2011
137-055-1020	3-31-2011	Amend(T)	5-1-2011	137-082-0240	4-1-2011	Amend	5-1-2011
137-055-1090	3-31-2011	Amend(T)	5-1-2011	137-082-0250	4-1-2011	Amend	5-1-2011
137-055-1120	3-31-2011	Amend(T)	5-1-2011	137-082-0260	4-1-2011	Amend	5-1-2011
137-055-1145	3-31-2011	Amend(T)	5-1-2011	137-082-0270	4-1-2011	Amend	5-1-2011
137-055-3220	3-31-2011	Amend(T)	5-1-2011	137-082-0280	4-1-2011	Amend	5-1-2011
137-055-3240	3-31-2011	Amend(T)	5-1-2011	137-083-0000	4-1-2011	Amend	5-1-2011
137-055-3400	3-31-2011	Amend(T)	5-1-2011	137-083-0010	4-1-2011	Amend	5-1-2011
137-055-3420	3-31-2011	Amend(T)	5-1-2011	137-083-0020	4-1-2011	Amend	5-1-2011
137-055-3430	12-27-2010	Amend	2-1-2011	137-083-0040	4-1-2011	Amend	5-1-2011
137-055-3430(T)	12-27-2010	Repeal	2-1-2011	137-083-0050	4-1-2011	Amend	5-1-2011
137-055-4040	3-31-2011	Amend(T)	5-1-2011	141-040-0211	1-1-2011	Amend	1-1-2011
137-055-4455	3-31-2011	Amend(T)	5-1-2011	141-040-0212	1-1-2011	Amend	1-1-2011
137-055-4540	3-31-2011	Amend(T)	5-1-2011	141-040-0213	1-1-2011	Amend	1-1-2011
137-055-5080	3-31-2011	Amend(T)	5-1-2011	141-040-0214	1-1-2011	Amend	1-1-2011

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141-089-0625	3-1-2011	Adopt	4-1-2011	141-093-0141	3-1-2011	Adopt	4-1-2011
141-089-0630	3-1-2011	Adopt	4-1-2011	141-093-0145	3-1-2011	Adopt	4-1-2011
141-089-0635	3-1-2011	Adopt	4-1-2011	141-093-0150	3-1-2011	Adopt	4-1-2011
141-089-0640	3-1-2011	Adopt	4-1-2011	141-093-0151	3-1-2011	Adopt	4-1-2011
141-089-0645	3-1-2011	Adopt	4-1-2011	141-093-0155	3-1-2011	Adopt	4-1-2011
141-089-0650	3-1-2011	Adopt	4-1-2011	141-093-0160	3-1-2011	Adopt	4-1-2011
141-089-0655	3-1-2011	Adopt	4-1-2011	141-093-0165	3-1-2011	Adopt	4-1-2011
141-089-0656	3-1-2011	Adopt	4-1-2011	141-093-0170	3-1-2011	Adopt	4-1-2011
141-089-0660	3-1-2011	Adopt	4-1-2011	141-093-0175	3-1-2011	Adopt	4-1-2011
141-089-0665	3-1-2011	Adopt	4-1-2011	141-100-0000	3-1-2011	Am. & Ren.	4-1-2011
141-089-0670	3-1-2011	Adopt	4-1-2011	141-100-0010	3-1-2011	Amend	4-1-2011
141-089-0675	3-1-2011	Adopt	4-1-2011	141-100-0020	3-1-2011	Amend	4-1-2011
141-089-0680	3-1-2011	Adopt	4-1-2011	141-100-0030	3-1-2011	Amend	4-1-2011
141-089-0685	3-1-2011	Adopt	4-1-2011	141-100-0035	3-1-2011	Adopt	4-1-2011
141-089-0690	3-1-2011	Adopt	4-1-2011	141-100-0040	3-1-2011	Amend	4-1-2011
141-089-0695	3-1-2011	Adopt	4-1-2011	141-100-0050	3-1-2011	Am. & Ren.	4-1-2011
141-089-0700	3-1-2011	Adopt	4-1-2011	141-100-0052	3-1-2011	Adopt	4-1-2011
141-089-0705	3-1-2011	Adopt	4-1-2011	141-100-0055	3-1-2011	Amend	4-1-2011
141-089-0710	3-1-2011	Adopt	4-1-2011	141-100-0060	3-1-2011	Amend	4-1-2011
141-089-0715	3-1-2011	Adopt	4-1-2011	141-100-0070	3-1-2011	Amend	4-1-2011
141-089-0720	3-1-2011	Adopt	4-1-2011	141-100-0080	3-1-2011	Amend	4-1-2011
141-089-0725	3-1-2011	Adopt	4-1-2011	141-100-0090	3-1-2011	Amend	4-1-2011
141-089-0730	3-1-2011	Adopt	4-1-2011	150-280.075	1-1-2011	Amend	2-1-2011
141-089-0735	3-1-2011	Adopt	4-1-2011	150-293.525(1)(b)	1-1-2011	Amend	2-1-2011
141-089-0740	3-1-2011	Adopt	4-1-2011	150-294.175(2)-(B)	1-1-2011	Amend	2-1-2011
141-089-0745	3-1-2011	Adopt	4-1-2011	150-307.126	1-1-2011	Adopt	2-1-2011
141-089-0750	3-1-2011	Adopt	4-1-2011	150-311.160	1-1-2011	Repeal	2-1-2011
141-089-0755	3-1-2011	Adopt	4-1-2011	150-314.402(1)	1-1-2011	Amend	2-1-2011
141-089-0760	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(A)	12-1-2010	Amend(T)	1-1-2011
141-089-0765	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(A)	3-21-2011	Amend	5-1-2011
141-089-0770	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(A) (Temp)	3-21-2011	Repeal	5-1-2011
141-089-0775	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(C)	12-1-2010	Suspend	1-1-2011
141-089-0780	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(C)	3-21-2011	Adopt	5-1-2011
141-089-0785	3-1-2011	Adopt	4-1-2011	150-314.665(2)-(C) (Temp)	3-21-2011	Repeal	5-1-2011
141-089-0790	3-1-2011	Adopt	4-1-2011	150-314.760	1-1-2011	Repeal	2-1-2011
141-089-0795	3-1-2011	Adopt	4-1-2011	150-315.354	12-17-2010	Amend(T)	2-1-2011
141-089-0800	3-1-2011	Adopt	4-1-2011	150-316.587(8)-(A)	1-1-2011	Amend	2-1-2011
141-089-0805	3-1-2011	Adopt	4-1-2011	150-316.OL2010.CH66	1-1-2011	Adopt	2-1-2011
141-089-0810	3-1-2011	Adopt	4-1-2011	150-323.500(9)	1-1-2011	Amend	2-1-2011
141-089-0815	3-1-2011	Adopt	4-1-2011	150-323.500(9) (T)	1-1-2011	Repeal	2-1-2011
141-089-0820	3-1-2011	Adopt	4-1-2011	150-465.101(5)-(B)	1-1-2011	Adopt	2-1-2011
141-089-0825	3-1-2011	Adopt	4-1-2011	150-465.101(5)-(B) (T)	1-1-2011	Repeal	2-1-2011
141-089-0830	3-1-2011	Adopt	4-1-2011	162-001-0010	1-27-2011	Repeal	3-1-2011
141-089-0835	3-1-2011	Adopt	4-1-2011	162-010-0030	1-27-2011	Amend	3-1-2011
141-093-0100	3-1-2011	Adopt	4-1-2011	162-011-0000	1-27-2011	Repeal	3-1-2011
141-093-0103	3-1-2011	Adopt	4-1-2011	162-011-0010	1-27-2011	Repeal	3-1-2011
141-093-0104	3-1-2011	Adopt	4-1-2011	162-011-0020	1-27-2011	Repeal	3-1-2011
141-093-0105	3-1-2011	Adopt	4-1-2011	162-011-0030	1-27-2011	Repeal	3-1-2011
141-093-0107	3-1-2011	Adopt	4-1-2011	162-011-0040	1-27-2011	Repeal	3-1-2011
141-093-0110	3-1-2011	Adopt	4-1-2011	162-012-0000	1-27-2011	Repeal	3-1-2011
141-093-0115	3-1-2011	Adopt	4-1-2011	162-012-0010	1-27-2011	Repeal	3-1-2011
141-093-0120	3-1-2011	Adopt	4-1-2011	162-012-0020	1-27-2011	Repeal	3-1-2011
141-093-0125	3-1-2011	Adopt	4-1-2011	162-012-0030	1-27-2011	Repeal	3-1-2011
141-093-0130	3-1-2011	Adopt	4-1-2011	162-012-0040	1-27-2011	Repeal	3-1-2011
141-093-0135	3-1-2011	Adopt	4-1-2011	162-012-0050	1-27-2011	Repeal	3-1-2011

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162-013-0010	1-27-2011	Repeal	3-1-2011	165-020-2027	2-11-2011	Adopt(T)	3-1-2011
162-013-0020	1-27-2011	Repeal	3-1-2011	165-020-2028	2-18-2011	Adopt(T)	4-1-2011
162-013-0030	1-27-2011	Repeal	3-1-2011	165-020-2029	2-18-2011	Adopt(T)	4-1-2011
162-013-0040	1-27-2011	Repeal	3-1-2011	165-020-2030	2-22-2011	Adopt(T)	4-1-2011
162-013-0050	1-27-2011	Repeal	3-1-2011	165-020-2031	3-8-2011	Adopt(T)	4-1-2011
162-013-0060	1-27-2011	Repeal	3-1-2011	170-061-0015	2-28-2011	Amend	4-1-2011
162-014-0000	1-27-2011	Repeal	3-1-2011	170-062-0000	12-1-2010	Amend(T)	1-1-2011
162-014-0010	1-27-2011	Repeal	3-1-2011	170-062-0000	4-1-2011	Amend	5-1-2011
162-014-0020	1-27-2011	Repeal	3-1-2011	170-062-0000(T)	4-1-2011	Repeal	5-1-2011
162-014-0030	1-27-2011	Repeal	3-1-2011	172-001-0005	1-10-2011	Amend	2-1-2011
162-014-0040	1-27-2011	Repeal	3-1-2011	172-005-0000	1-10-2011	Amend	2-1-2011
162-014-0050	1-27-2011	Repeal	3-1-2011	172-005-0010	1-10-2011	Amend	2-1-2011
162-014-0060	1-27-2011	Repeal	3-1-2011	172-005-0020	1-10-2011	Amend	2-1-2011
162-014-0070	1-27-2011	Repeal	3-1-2011	172-005-0030	1-10-2011	Amend	2-1-2011
162-014-0080	1-27-2011	Repeal	3-1-2011	172-005-0040	1-10-2011	Amend	2-1-2011
162-014-0090	1-27-2011	Repeal	3-1-2011	172-005-0050	1-10-2011	Amend	2-1-2011
162-014-0100	1-27-2011	Repeal	3-1-2011	172-005-0060	1-10-2011	Amend	2-1-2011
162-014-0110	1-27-2011	Repeal	3-1-2011	172-005-0065	1-10-2011	Adopt	2-1-2011
162-014-0120	1-27-2011	Repeal	3-1-2011	172-005-0070	1-10-2011	Amend	2-1-2011
162-014-0130	1-27-2011	Repeal	3-1-2011	177-040-0000	1-1-2011	Amend	2-1-2011
162-014-0140	1-27-2011	Repeal	3-1-2011	177-040-0001	1-1-2011	Amend	2-1-2011
162-014-0150	1-27-2011	Repeal	3-1-2011	177-040-0003	1-1-2011	Amend	2-1-2011
162-014-0160	1-27-2011	Repeal	3-1-2011	177-040-0024	1-1-2011	Adopt	2-1-2011
162-014-0170	1-27-2011	Repeal	3-1-2011	177-040-0070	1-1-2011	Amend	2-1-2011
162-014-0180	1-27-2011	Repeal	3-1-2011	177-085-0065	12-12-2010	Amend	1-1-2011
162-014-0190	1-27-2011	Repeal	3-1-2011	177-094-0080	12-1-2010	Amend	1-1-2011
162-014-0200	1-27-2011	Repeal	3-1-2011	177-098-0010	12-12-2010	Amend	1-1-2011
162-014-0210	1-27-2011	Repeal	3-1-2011	177-098-0040	12-12-2010	Amend	1-1-2011
162-014-0220	1-27-2011	Repeal	3-1-2011	177-098-0060	12-12-2010	Amend	1-1-2011
162-014-0230	1-27-2011	Repeal	3-1-2011	177-098-0110	12-12-2010	Amend	1-1-2011
162-014-0240	1-27-2011	Repeal	3-1-2011	177-099-0100	3-1-2011	Adopt	4-1-2011
162-015-0000	1-27-2011	Repeal	3-1-2011	190-001-0000	12-1-2010	Repeal	1-1-2011
162-015-0010	1-27-2011	Repeal	3-1-2011	190-001-0005	12-1-2010	Repeal	1-1-2011
162-015-0020	1-27-2011	Repeal	3-1-2011	190-010-0000	1-3-2011	Repeal	2-1-2011
162-015-0030	1-27-2011	Repeal	3-1-2011	190-010-0005	1-3-2011	Repeal	2-1-2011
162-015-0040	1-27-2011	Repeal	3-1-2011	190-010-0010	1-3-2011	Repeal	2-1-2011
162-015-0050	1-27-2011	Repeal	3-1-2011	190-010-0015	1-3-2011	Repeal	2-1-2011
162-015-0060	1-27-2011	Repeal	3-1-2011	190-010-0020	1-3-2011	Repeal	2-1-2011
162-015-0070	1-27-2011	Repeal	3-1-2011	190-010-0025	1-3-2011	Repeal	2-1-2011
162-015-0080	1-27-2011	Repeal	3-1-2011	190-010-0030	1-3-2011	Repeal	2-1-2011
162-015-0090	1-27-2011	Repeal	3-1-2011	190-010-0035	1-3-2011	Am. & Ren.	2-1-2011
162-015-0100	1-27-2011	Repeal	3-1-2011	190-010-0040	1-3-2011	Repeal	2-1-2011
162-015-0110	1-27-2011	Repeal	3-1-2011	213-013-0010	1-1-2012	Amend	1-1-2011
162-015-0120	1-27-2011	Repeal	3-1-2011	213-017-0006	12-26-2010	Amend	1-1-2011
162-015-0130	1-27-2011	Repeal	3-1-2011	213-017-0006(T)	12-26-2010	Repeal	1-1-2011
162-016-0000	1-27-2011	Repeal	3-1-2011	213-070-0000	1-1-2011	Adopt	1-1-2011
165-001-0009	4-8-2011	Adopt	5-1-2011	213-070-0005	1-1-2011	Adopt	1-1-2011
165-001-0015	4-8-2011	Amend	5-1-2011	213-070-0010	1-1-2011	Adopt	1-1-2011
165-001-0016	4-8-2011	Adopt	5-1-2011	213-070-0020	1-1-2011	Adopt	1-1-2011
165-001-0034	4-8-2011	Adopt	5-1-2011	213-070-0030	1-1-2011	Adopt	1-1-2011
165-001-0036	4-8-2011	Adopt	5-1-2011	213-070-0040	1-1-2011	Adopt	1-1-2011
165-001-0040	4-8-2011	Amend	5-1-2011	213-070-0050	1-1-2011	Adopt	1-1-2011
165-010-0005	2-4-2011	Amend	3-1-2011	250-010-0430	2-1-2011	Amend	2-1-2011
165-012-0005	4-8-2011	Amend	5-1-2011	250-010-0450	2-1-2011	Amend	2-1-2011
165-013-0010	4-8-2011	Amend	5-1-2011	250-010-0650	2-1-2011	Amend	2-1-2011

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250-020-0221	4-8-2011	Amend(T)	5-1-2011	291-006-0045	3-1-2011	Adopt	4-1-2011
250-020-0280	5-25-2011	Amend	4-1-2011	291-015-0100	11-19-2010	Amend	1-1-2011
250-021-0040	1-3-2011	Amend(T)	2-1-2011	291-015-0100(T)	11-19-2010	Repeal	1-1-2011
255-001-0005	1-11-2011	Amend	2-1-2011	291-015-0105	11-19-2010	Amend	1-1-2011
255-001-0010	1-11-2011	Amend	2-1-2011	291-015-0105(T)	11-19-2010	Repeal	1-1-2011
255-001-0016	1-11-2011	Amend	2-1-2011	291-015-0110	11-19-2010	Amend	1-1-2011
255-005-0005	12-1-2010	Amend	1-1-2011	291-015-0110(T)	11-19-2010	Repeal	1-1-2011
255-005-0005(T)	12-1-2010	Repeal	1-1-2011	291-015-0115	11-19-2010	Amend	1-1-2011
255-015-0015	12-1-2010	Amend	1-1-2011	291-015-0115(T)	11-19-2010	Repeal	1-1-2011
255-020-0005	3-4-2011	Amend	4-1-2011	291-015-0120	11-19-2010	Amend	1-1-2011
255-020-0015	3-4-2011	Amend	4-1-2011	291-015-0120(T)	11-19-2010	Repeal	1-1-2011
255-030-0027	12-1-2010	Amend	1-1-2011	291-015-0125	11-19-2010	Amend	1-1-2011
255-030-0027(T)	12-1-2010	Repeal	1-1-2011	291-015-0125(T)	11-19-2010	Repeal	1-1-2011
255-060-0018	1-11-2011	Adopt	2-1-2011	291-015-0130	11-19-2010	Repeal	1-1-2011
255-080-0001	12-1-2010	Amend	1-1-2011	291-015-0135	11-19-2010	Amend	1-1-2011
255-080-0005	12-1-2010	Amend	1-1-2011	291-015-0135(T)	11-19-2010	Repeal	1-1-2011
255-080-0008	12-1-2010	Adopt	1-1-2011	291-015-0140	11-19-2010	Repeal	1-1-2011
255-080-0008	12-1-2010	Amend	1-1-2011	291-015-0145	11-19-2010	Repeal	1-1-2011
255-080-0011	12-1-2010	Amend	1-1-2011	291-015-0150	11-19-2010	Repeal	1-1-2011
257-010-0015	2-28-2011	Amend	3-1-2011	291-048-0100	12-13-2010	Am. & Ren.(T)	1-1-2011
257-010-0015(T)	2-28-2011	Repeal	3-1-2011	291-048-0100	4-1-2011	Am. & Ren.	5-1-2011
257-010-0020	2-28-2011	Amend	3-1-2011	291-048-0100(T)	4-1-2011	Repeal	5-1-2011
257-010-0020(T)	2-28-2011	Repeal	3-1-2011	291-048-0110	12-13-2010	Am. & Ren.(T)	1-1-2011
257-010-0025	2-28-2011	Amend	3-1-2011	291-048-0110	4-1-2011	Am. & Ren.	5-1-2011
257-010-0025(T)	2-28-2011	Repeal	3-1-2011	291-048-0110(T)	4-1-2011	Repeal	5-1-2011
257-010-0045	2-28-2011	Amend	3-1-2011	291-048-0115	12-13-2010	Am. & Ren.(T)	1-1-2011
257-010-0045(T)	2-28-2011	Repeal	3-1-2011	291-048-0115	4-1-2011	Am. & Ren.	5-1-2011
257-010-0050	2-28-2011	Amend	3-1-2011	291-048-0115(T)	4-1-2011	Repeal	5-1-2011
257-010-0050(T)	2-28-2011	Repeal	3-1-2011	291-048-0120	12-13-2010	Suspend	1-1-2011
257-010-0055	2-28-2011	Amend	3-1-2011	291-048-0120	4-1-2011	Repeal	5-1-2011
257-010-0055(T)	2-28-2011	Repeal	3-1-2011	291-048-0130	12-13-2010	Am. & Ren.(T)	1-1-2011
257-050-0200	3-8-2011	Amend	4-1-2011	291-048-0130	4-1-2011	Am. & Ren.	5-1-2011
259-008-0011	12-23-2010	Amend	2-1-2011	291-048-0130(T)	4-1-2011	Repeal	5-1-2011
259-008-0011(T)	12-23-2010	Repeal	2-1-2011	291-048-0140	12-13-2010	Am. & Ren.(T)	1-1-2011
259-008-0025	5-1-2011	Amend	5-1-2011	291-048-0140	4-1-2011	Am. & Ren.	5-1-2011
259-009-0005	5-1-2011	Amend	5-1-2011	291-048-0140(T)	4-1-2011	Repeal	5-1-2011
259-009-0062	5-1-2011	Amend	5-1-2011	291-048-0150	12-13-2010	Am. & Ren.(T)	1-1-2011
259-009-0070	4-1-2011	Amend	4-1-2011	291-048-0150	4-1-2011	Am. & Ren.	5-1-2011
274-031-0001	3-24-2011	Adopt	5-1-2011	291-048-0150(T)	4-1-2011	Repeal	5-1-2011
274-031-0002	3-24-2011	Adopt	5-1-2011	291-048-0160	12-13-2010	Am. & Ren.(T)	1-1-2011
274-031-0003	3-24-2011	Adopt	5-1-2011	291-048-0160	4-1-2011	Am. & Ren.	5-1-2011
274-031-0004	3-24-2011	Adopt	5-1-2011	291-048-0160(T)	4-1-2011	Repeal	5-1-2011
274-031-0005	3-24-2011	Adopt	5-1-2011	291-048-0170	12-13-2010	Am. & Ren.(T)	1-1-2011
274-031-0006	3-24-2011	Adopt	5-1-2011	291-048-0170	4-1-2011	Am. & Ren.	5-1-2011
274-031-0007	3-24-2011	Adopt	5-1-2011	291-048-0170(T)	4-1-2011	Repeal	5-1-2011
274-031-0008	3-24-2011	Adopt	5-1-2011	291-048-0180	12-13-2010	Suspend	1-1-2011
274-031-0009	3-24-2011	Adopt	5-1-2011	291-048-0180	4-1-2011	Repeal	5-1-2011
291-006-0005	3-1-2011	Amend	4-1-2011	291-048-0190	12-13-2010	Am. & Ren.(T)	1-1-2011
291-006-0011	3-1-2011	Adopt	4-1-2011	291-048-0190	4-1-2011	Am. & Ren.	5-1-2011
291-006-0012	3-1-2011	Adopt	4-1-2011	291-048-0190(T)	4-1-2011	Repeal	5-1-2011
291-006-0015	3-1-2011	Amend	4-1-2011	291-048-0230	12-13-2010	Adopt(T)	1-1-2011
291-006-0020	3-1-2011	Repeal	4-1-2011	291-048-0230	4-1-2011	Adopt	5-1-2011
291-006-0025	3-1-2011	Repeal	4-1-2011	291-048-0230(T)	4-1-2011	Repeal	5-1-2011
291-006-0031	3-1-2011	Adopt	4-1-2011	291-048-0240	12-13-2010	Adopt(T)	1-1-2011
291-006-0035	3-1-2011	Adopt	4-1-2011	291-048-0240	4-1-2011	Adopt	5-1-2011

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291-048-0270	12-13-2010	Adopt(T)	1-1-2011	291-180-0115	3-4-2011	Suspend	4-1-2011
291-048-0270	4-1-2011	Adopt	5-1-2011	291-180-0125	3-4-2011	Suspend	4-1-2011
291-048-0270(T)	4-1-2011	Repeal	5-1-2011	291-180-0135	3-4-2011	Suspend	4-1-2011
291-048-0280	12-13-2010	Adopt(T)	1-1-2011	291-180-0145	3-4-2011	Suspend	4-1-2011
291-048-0280	4-1-2011	Adopt	5-1-2011	291-180-0155	3-4-2011	Suspend	4-1-2011
291-048-0280(T)	4-1-2011	Repeal	5-1-2011	291-180-0165	3-4-2011	Suspend	4-1-2011
291-048-0320	12-13-2010	Adopt(T)	1-1-2011	291-180-0175	3-4-2011	Suspend	4-1-2011
291-048-0320	4-1-2011	Adopt	5-1-2011	291-180-0185	3-4-2011	Suspend	4-1-2011
291-048-0320(T)	4-1-2011	Repeal	5-1-2011	291-180-0195	3-4-2011	Suspend	4-1-2011
291-063-0010	12-1-2010	Amend(T)	1-1-2011	291-180-0205	3-4-2011	Suspend	4-1-2011
291-063-0016	12-1-2010	Amend(T)	1-1-2011	291-180-0215	3-4-2011	Suspend	4-1-2011
291-063-0030	12-1-2010	Amend(T)	1-1-2011	291-180-0225	3-4-2011	Suspend	4-1-2011
291-097-0010	4-8-2011	Amend	5-1-2011	291-180-0235	3-4-2011	Suspend	4-1-2011
291-097-0010(T)	4-8-2011	Repeal	5-1-2011	291-180-0245	3-4-2011	Suspend	4-1-2011
291-097-0020	4-8-2011	Amend	5-1-2011	291-180-0251	3-4-2011	Adopt(T)	4-1-2011
291-097-0020(T)	4-8-2011	Repeal	5-1-2011	291-180-0255	3-4-2011	Suspend	4-1-2011
291-097-0025	4-8-2011	Amend	5-1-2011	291-180-0261	3-4-2011	Adopt(T)	4-1-2011
291-097-0025(T)	4-8-2011	Repeal	5-1-2011	291-180-0285	3-4-2011	Suspend	4-1-2011
291-097-0031	4-8-2011	Adopt	5-1-2011	291-180-0295	3-4-2011	Suspend	4-1-2011
291-097-0040	4-8-2011	Amend	5-1-2011	291-180-0305	3-4-2011	Suspend	4-1-2011
291-097-0040(T)	4-8-2011	Repeal	5-1-2011	291-180-0315	3-4-2011	Suspend	4-1-2011
291-097-0050	4-8-2011	Amend	5-1-2011	291-180-0325	3-4-2011	Suspend	4-1-2011
291-097-0050(T)	4-8-2011	Repeal	5-1-2011	291-180-0335	3-4-2011	Suspend	4-1-2011
291-109-0100	3-1-2011	Amend	4-1-2011	291-180-0345	3-4-2011	Suspend	4-1-2011
291-109-0110	3-1-2011	Amend	4-1-2011	291-180-0355	3-4-2011	Suspend	4-1-2011
291-109-0120	3-1-2011	Amend	4-1-2011	291-180-0365	3-4-2011	Suspend	4-1-2011
291-109-0125	3-1-2011	Adopt	4-1-2011	291-180-0375	3-4-2011	Suspend	4-1-2011
291-109-0140	3-1-2011	Amend	4-1-2011	291-180-0385	3-4-2011	Suspend	4-1-2011
291-109-0150	3-1-2011	Amend	4-1-2011	291-180-0395	3-4-2011	Suspend	4-1-2011
291-109-0160	3-1-2011	Amend	4-1-2011	291-180-0405	3-4-2011	Suspend	4-1-2011
291-109-0170	3-1-2011	Amend	4-1-2011	291-180-0415	3-4-2011	Suspend	4-1-2011
291-109-0180	3-1-2011	Amend	4-1-2011	291-180-0425	3-4-2011	Suspend	4-1-2011
291-109-0190	3-1-2011	Amend	4-1-2011	291-180-0435	3-4-2011	Suspend	4-1-2011
291-124-0005	11-19-2010	Amend	1-1-2011	291-180-0445	3-4-2011	Suspend	4-1-2011
291-124-0010	11-19-2010	Amend	1-1-2011	291-180-0455	3-4-2011	Suspend	4-1-2011
291-124-0015	11-19-2010	Repeal	1-1-2011	291-180-0465	3-4-2011	Suspend	4-1-2011
291-124-0016	11-19-2010	Adopt	1-1-2011	291-180-0475	3-4-2011	Suspend	4-1-2011
291-124-0017	11-19-2010	Adopt	1-1-2011	291-180-0485	3-4-2011	Suspend	4-1-2011
291-124-0020	11-19-2010	Amend	1-1-2011	291-180-0495	3-4-2011	Suspend	4-1-2011
291-124-0025	11-19-2010	Repeal	1-1-2011	291-180-0505	3-4-2011	Suspend	4-1-2011
291-124-0030	11-19-2010	Amend	1-1-2011	291-180-0515	3-4-2011	Suspend	4-1-2011
291-124-0035	11-19-2010	Amend	1-1-2011	291-180-0525	3-4-2011	Suspend	4-1-2011
291-124-0041	11-19-2010	Amend	1-1-2011	291-180-0535	3-4-2011	Suspend	4-1-2011
291-124-0055	11-19-2010	Amend	1-1-2011	291-180-0545	3-4-2011	Suspend	4-1-2011
291-124-0060	11-19-2010	Amend	1-1-2011	291-180-0555	3-4-2011	Suspend	4-1-2011
291-124-0065	11-19-2010	Amend	1-1-2011	291-180-0565	3-4-2011	Suspend	4-1-2011
291-124-0070	11-19-2010	Amend	1-1-2011	291-180-0575	3-4-2011	Suspend	4-1-2011
291-124-0075	11-19-2010	Amend	1-1-2011	291-180-0585	3-4-2011	Suspend	4-1-2011
291-124-0080	11-19-2010	Amend	1-1-2011	291-180-0595	3-4-2011	Suspend	4-1-2011
291-124-0085	11-19-2010	Amend	1-1-2011	291-180-0605	3-4-2011	Suspend	4-1-2011
291-124-0090	11-19-2010	Adopt	1-1-2011	291-180-0615	3-4-2011	Suspend	4-1-2011
291-124-0095	11-19-2010	Repeal	1-1-2011	291-180-0625	3-4-2011	Suspend	4-1-2011
291-131-0020	4-1-2011	Amend(T)	4-1-2011	291-180-0635	3-4-2011	Suspend	4-1-2011
291-131-0025	4-1-2011	Amend(T)	4-1-2011	291-180-0645	3-4-2011	Suspend	4-1-2011
291-131-0035	4-1-2011	Amend(T)	4-1-2011	291-180-0655	3-4-2011	Suspend	4-1-2011

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291-202-0020	1-28-2011	Amend	3-1-2011	309-043-0030	2-1-2011	Repeal	3-1-2011
291-202-0100	1-28-2011	Adopt	3-1-2011	309-043-0035	2-1-2011	Repeal	3-1-2011
291-202-0110	1-28-2011	Adopt	3-1-2011	309-043-0040	2-1-2011	Repeal	3-1-2011
291-202-0120	1-28-2011	Adopt	3-1-2011	309-043-0045	2-1-2011	Repeal	3-1-2011
291-202-0130	1-28-2011	Adopt	3-1-2011	309-043-0050	2-1-2011	Repeal	3-1-2011
309-034-0150	2-4-2011	Repeal	3-1-2011	309-043-0055	2-1-2011	Repeal	3-1-2011
309-034-0160	2-4-2011	Repeal	3-1-2011	309-043-0060	2-1-2011	Repeal	3-1-2011
309-034-0170	2-4-2011	Repeal	3-1-2011	309-043-0065	2-1-2011	Repeal	3-1-2011
309-034-0180	2-4-2011	Repeal	3-1-2011	309-043-0070	2-1-2011	Repeal	3-1-2011
309-034-0190	2-4-2011	Repeal	3-1-2011	309-043-0075	2-1-2011	Repeal	3-1-2011
309-034-0205	2-4-2011	Repeal	3-1-2011	309-043-0080	2-1-2011	Repeal	3-1-2011
309-034-0210	2-4-2011	Repeal	3-1-2011	309-043-0085	2-1-2011	Repeal	3-1-2011
309-034-0240	2-4-2011	Repeal	3-1-2011	309-043-0090	2-1-2011	Repeal	3-1-2011
309-034-0250	2-4-2011	Repeal	3-1-2011	309-043-0095	2-1-2011	Repeal	3-1-2011
309-034-0260	2-4-2011	Repeal	3-1-2011	309-043-0100	2-1-2011	Repeal	3-1-2011
309-034-0270	2-4-2011	Repeal	3-1-2011	309-043-0105	2-1-2011	Repeal	3-1-2011
309-034-0290	2-4-2011	Repeal	3-1-2011	309-043-0110	2-1-2011	Repeal	3-1-2011
309-034-0310	2-4-2011	Repeal	3-1-2011	309-043-0115	2-1-2011	Repeal	3-1-2011
309-034-0320	2-4-2011	Repeal	3-1-2011	309-043-0120	2-1-2011	Repeal	3-1-2011
309-034-0400	2-4-2011	Amend	3-1-2011	309-043-0125	2-1-2011	Repeal	3-1-2011
309-034-0410	2-4-2011	Amend	3-1-2011	309-043-0130	2-1-2011	Repeal	3-1-2011
309-034-0420	2-4-2011	Amend	3-1-2011	309-043-0135	2-1-2011	Repeal	3-1-2011
309-034-0430	2-4-2011	Amend	3-1-2011	309-043-0140	2-1-2011	Repeal	3-1-2011
309-034-0440	2-4-2011	Amend	3-1-2011	309-043-0145	2-1-2011	Repeal	3-1-2011
309-034-0450	2-4-2011	Amend	3-1-2011	309-043-0150	2-1-2011	Repeal	3-1-2011
309-034-0460	2-4-2011	Amend	3-1-2011	309-043-0155	2-1-2011	Repeal	3-1-2011
309-034-0470	2-4-2011	Amend	3-1-2011	309-043-0160	2-1-2011	Repeal	3-1-2011
309-034-0480	2-4-2011	Amend	3-1-2011	309-043-0165	2-1-2011	Repeal	3-1-2011
309-034-0490	2-4-2011	Amend	3-1-2011	309-043-0170	2-1-2011	Repeal	3-1-2011
309-034-0500	2-4-2011	Adopt	3-1-2011	309-043-0175	2-1-2011	Repeal	3-1-2011
309-041-0200	2-1-2011	Repeal	3-1-2011	309-043-0180	2-1-2011	Repeal	3-1-2011
309-041-0205	2-1-2011	Repeal	3-1-2011	309-043-0185	2-1-2011	Repeal	3-1-2011
309-041-0210	2-1-2011	Repeal	3-1-2011	309-043-0190	2-1-2011	Repeal	3-1-2011
309-041-0215	2-1-2011	Repeal	3-1-2011	309-043-0195	2-1-2011	Repeal	3-1-2011
309-041-0220	2-1-2011	Repeal	3-1-2011	309-043-0200	2-1-2011	Repeal	3-1-2011
309-041-0225	2-1-2011	Repeal	3-1-2011	309-049-0000	2-1-2011	Renumber	3-1-2011
309-041-0230	2-1-2011	Repeal	3-1-2011	309-049-0005	2-1-2011	Renumber	3-1-2011
309-041-0235	2-1-2011	Repeal	3-1-2011	309-049-0010	2-1-2011	Renumber	3-1-2011
309-041-0240	2-1-2011	Repeal	3-1-2011	309-049-0015	2-1-2011	Renumber	3-1-2011
309-041-0245	2-1-2011	Repeal	3-1-2011	309-049-0020	2-1-2011	Renumber	3-1-2011
309-041-0250	2-1-2011	Repeal	3-1-2011	309-100-0100	1-7-2011	Adopt(T)	2-1-2011
309-041-0255	2-1-2011	Repeal	3-1-2011	309-100-0110	1-7-2011	Adopt(T)	2-1-2011
309-041-1300	2-1-2011	Renumber	3-1-2011	309-100-0120	1-7-2011	Adopt(T)	2-1-2011
309-041-1310	2-1-2011	Renumber	3-1-2011	309-100-0130	1-7-2011	Adopt(T)	2-1-2011
309-041-1320	2-1-2011	Renumber	3-1-2011	309-100-0140	1-7-2011	Adopt(T)	2-1-2011
309-041-1330	2-1-2011	Renumber	3-1-2011	309-100-0150	1-7-2011	Adopt(T)	2-1-2011
309-041-1340	2-1-2011	Renumber	3-1-2011	309-102-0000	1-7-2011	Suspend	2-1-2011
309-041-1350	2-1-2011	Renumber	3-1-2011	309-102-0005	1-7-2011	Suspend	2-1-2011
309-041-1360	2-1-2011	Renumber	3-1-2011	309-102-0010	1-7-2011	Suspend	2-1-2011
309-041-1370	2-1-2011	Renumber	3-1-2011	309-102-0015	1-7-2011	Suspend	2-1-2011
309-043-0000	2-1-2011	Repeal	3-1-2011	309-102-0020	1-7-2011	Suspend	2-1-2011
309-043-0005	2-1-2011	Repeal	3-1-2011	309-102-0025	1-7-2011	Suspend	2-1-2011
309-043-0010	2-1-2011	Repeal	3-1-2011	309-114-0005	11-19-2010	Amend(T)	1-1-2011
309-043-0015	2-1-2011	Repeal	3-1-2011	309-114-0020	11-19-2010	Amend(T)	1-1-2011
309-043-0020	2-1-2011	Repeal	3-1-2011	309-114-0030	11-19-2010	Amend(T)	1-1-2011

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309-114-0050	11-19-2010	Adopt(T)	1-1-2011	330-112-0020	12-15-2010	Adopt	1-1-2011
309-114-0060	11-19-2010	Adopt(T)	1-1-2011	330-112-0020(T)	12-15-2010	Repeal	1-1-2011
309-114-0070	11-19-2010	Adopt(T)	1-1-2011	330-112-0030	12-15-2010	Adopt	1-1-2011
330-070-0010	12-22-2010	Amend	2-1-2011	330-112-0030(T)	12-15-2010	Repeal	1-1-2011
330-070-0010(T)	12-22-2010	Repeal	2-1-2011	330-112-0040	12-15-2010	Adopt	1-1-2011
330-070-0013	12-22-2010	Amend	2-1-2011	330-112-0040(T)	12-15-2010	Repeal	1-1-2011
330-070-0013(T)	12-22-2010	Repeal	2-1-2011	330-112-0050	12-15-2010	Adopt	1-1-2011
330-070-0014	12-22-2010	Amend	2-1-2011	330-112-0050(T)	12-15-2010	Repeal	1-1-2011
330-070-0019	12-22-2010	Adopt	2-1-2011	330-112-0060	12-15-2010	Adopt	1-1-2011
330-070-0019(T)	12-22-2010	Repeal	2-1-2011	330-112-0060(T)	12-15-2010	Repeal	1-1-2011
330-070-0020	12-22-2010	Amend	2-1-2011	330-112-0070	12-15-2010	Adopt	1-1-2011
330-070-0021	12-22-2010	Amend	2-1-2011	330-112-0070(T)	12-15-2010	Repeal	1-1-2011
330-070-0022	12-22-2010	Amend	2-1-2011	330-112-0080	12-15-2010	Adopt	1-1-2011
330-070-0022(T)	12-22-2010	Repeal	2-1-2011	330-112-0080(T)	12-15-2010	Repeal	1-1-2011
330-070-0024	12-22-2010	Amend	2-1-2011	330-112-0090	12-15-2010	Adopt	1-1-2011
330-070-0025	12-22-2010	Amend	2-1-2011	330-112-0090(T)	12-15-2010	Repeal	1-1-2011
330-070-0026	12-22-2010	Amend	2-1-2011	330-112-0100	12-15-2010	Adopt	1-1-2011
330-070-0027	12-22-2010	Amend	2-1-2011	330-112-0100(T)	12-15-2010	Repeal	1-1-2011
330-070-0045	12-22-2010	Amend	2-1-2011	330-160-0015	2-22-2011	Amend	4-1-2011
330-070-0055	12-22-2010	Amend	2-1-2011	330-160-0015	3-4-2011	Amend	4-1-2011
330-070-0059	12-22-2010	Amend	2-1-2011	330-160-0015(T)	2-22-2011	Repeal	4-1-2011
330-070-0060	12-22-2010	Amend	2-1-2011	330-160-0020	3-4-2011	Amend	4-1-2011
330-070-0062	12-22-2010	Amend	2-1-2011	330-160-0025	3-4-2011	Amend	4-1-2011
330-070-0063	12-22-2010	Amend	2-1-2011	330-160-0030	3-4-2011	Amend	4-1-2011
330-070-0064	12-22-2010	Amend	2-1-2011	330-160-0040	2-22-2011	Adopt	4-1-2011
330-070-0070	12-22-2010	Amend	2-1-2011	330-160-0040(T)	2-22-2011	Repeal	4-1-2011
330-070-0073	12-22-2010	Amend	2-1-2011	330-160-0050	3-4-2011	Adopt	4-1-2011
330-070-0089	12-22-2010	Amend	2-1-2011	331-010-0050	3-1-2011	Adopt(T)	4-1-2011
330-070-0091	12-22-2010	Amend	2-1-2011	331-010-0050	3-17-2011	Adopt(T)	5-1-2011
330-070-0097	12-22-2010	Amend	2-1-2011	331-010-0050(T)	3-17-2011	Suspend	5-1-2011
330-09-0140	4-18-2011	Amend(T)	5-1-2011	331-020-0040	3-1-2011	Amend(T)	4-1-2011
330-090-0105	11-23-2010	Amend	1-1-2011	331-020-0040	3-17-2011	Amend(T)	5-1-2011
330-090-0105(T)	11-23-2010	Repeal	1-1-2011	331-020-0040(T)	3-17-2011	Suspend	5-1-2011
330-090-0110	11-23-2010	Amend	1-1-2011	331-565-0090	4-1-2011	Amend(T)	5-1-2011
330-090-0110	4-18-2011	Amend(T)	5-1-2011	332-015-0000	1-1-2011	Amend	2-1-2011
330-090-0110(T)	11-23-2010	Repeal	1-1-2011	332-015-0010	1-1-2011	Repeal	2-1-2011
330-090-0120	11-23-2010	Amend	1-1-2011	332-015-0030	1-1-2011	Amend	2-1-2011
330-090-0120(T)	11-23-2010	Repeal	1-1-2011	332-015-0040	1-1-2011	Amend	2-1-2011
330-090-0130	11-23-2010	Amend	1-1-2011	332-015-0050	1-1-2011	Amend	2-1-2011
330-090-0130	4-18-2011	Amend(T)	5-1-2011	332-015-0060	1-1-2011	Repeal	2-1-2011
330-090-0130(T)	11-23-2010	Repeal	1-1-2011	332-015-0065	1-1-2011	Repeal	2-1-2011
330-090-0133	11-23-2010	Amend	1-1-2011	332-015-0070	1-1-2011	Amend	2-1-2011
330-090-0133	4-18-2011	Amend(T)	5-1-2011	332-015-0070	4-4-2011	Amend(T)	5-1-2011
330-090-0133(T)	11-23-2010	Repeal	1-1-2011	332-015-0080	1-1-2011	Adopt	2-1-2011
330-090-0140	11-23-2010	Amend	1-1-2011	332-020-0000	1-1-2011	Amend	2-1-2011
330-090-0140(T)	11-23-2010	Repeal	1-1-2011	332-020-0010	1-1-2011	Amend	2-1-2011
330-090-0150	11-23-2010	Amend	1-1-2011	332-020-0015	1-1-2011	Amend	2-1-2011
330-090-0150(T)	11-23-2010	Repeal	1-1-2011	332-020-0017	1-1-2011	Adopt	2-1-2011
330-090-0350	11-23-2010	Adopt	1-1-2011	332-020-0020	1-1-2011	Amend	2-1-2011
330-090-0350(T)	11-23-2010	Repeal	1-1-2011	332-020-0020(T)	1-1-2011	Repeal	2-1-2011
330-090-0450	11-23-2010	Adopt	1-1-2011	332-025-0020	1-1-2011	Amend	2-1-2011
330-090-0450(T)	11-23-2010	Repeal	1-1-2011	332-025-0020	4-4-2011	Amend(T)	5-1-2011
330-112-0000	12-15-2010	Adopt	1-1-2011	332-025-0021	1-1-2011	Amend	2-1-2011
330-112-0000(T)	12-15-2010	Repeal	1-1-2011	332-025-0021	4-4-2011	Amend(T)	5-1-2011
330-112-0010	12-15-2010	Adopt	1-1-2011	332-025-0022	1-1-2011	Amend	2-1-2011

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332-025-0030	1-1-2011	Amend	2-1-2011	333-076-0140	12-15-2010	Amend	1-1-2011
332-025-0040	1-1-2011	Amend	2-1-2011	333-076-0145	12-15-2010	Amend	1-1-2011
332-025-0040	4-4-2011	Amend(T)	5-1-2011	333-076-0155	12-15-2010	Amend	1-1-2011
332-025-0050	1-1-2011	Amend	2-1-2011	333-076-0160	12-15-2010	Amend	1-1-2011
332-025-0060	1-1-2011	Amend	2-1-2011	333-076-0165	12-15-2010	Amend	1-1-2011
332-025-0070	1-1-2011	Adopt	2-1-2011	333-076-0170	12-15-2010	Amend	1-1-2011
332-025-0080	1-1-2011	Adopt	2-1-2011	333-076-0175	12-15-2010	Amend	1-1-2011
332-025-0100	1-1-2011	Adopt	2-1-2011	333-076-0180	12-15-2010	Amend	1-1-2011
332-030-0000	1-1-2011	Amend	2-1-2011	333-076-0190	12-15-2010	Amend	1-1-2011
333-002-0000	3-1-2011	Amend	4-1-2011	333-076-0250	12-15-2010	Adopt	1-1-2011
333-002-0010	3-1-2011	Amend	4-1-2011	333-076-0255	12-15-2010	Adopt	1-1-2011
333-002-0020	3-1-2011	Amend	4-1-2011	333-076-0260	12-15-2010	Adopt	1-1-2011
333-002-0030	3-1-2011	Amend	4-1-2011	333-076-0265	12-15-2010	Adopt	1-1-2011
333-002-0035	3-1-2011	Amend	4-1-2011	333-076-0270	12-15-2010	Adopt	1-1-2011
333-002-0040	3-1-2011	Amend	4-1-2011	333-255-0070	1-6-2011	Amend	2-1-2011
333-002-0050	3-1-2011	Amend	4-1-2011	333-255-0070(T)	1-6-2011	Repeal	2-1-2011
333-002-0060	3-1-2011	Amend	4-1-2011	333-255-0071	1-6-2011	Amend	2-1-2011
333-002-0070	3-1-2011	Amend	4-1-2011	333-255-0072	1-6-2011	Amend	2-1-2011
333-002-0080	3-1-2011	Amend	4-1-2011	333-255-0073	1-6-2011	Amend	2-1-2011
333-002-0090	3-1-2011	Repeal	4-1-2011	333-265-0050	1-6-2011	Amend	2-1-2011
333-002-0100	3-1-2011	Amend	4-1-2011	333-265-0090	1-6-2011	Amend	2-1-2011
333-002-0110	3-1-2011	Repeal	4-1-2011	333-265-0090(T)	1-6-2011	Repeal	2-1-2011
333-002-0120	3-1-2011	Amend	4-1-2011	333-265-0105	1-6-2011	Amend	2-1-2011
333-002-0130	3-1-2011	Amend	4-1-2011	333-265-0105(T)	1-6-2011	Repeal	2-1-2011
333-002-0140	3-1-2011	Amend	4-1-2011	333-265-0110	1-6-2011	Amend	2-1-2011
333-002-0150	3-1-2011	Amend	4-1-2011	333-500-0005	12-15-2010	Amend	1-1-2011
333-002-0160	3-1-2011	Amend	4-1-2011	333-500-0010	12-15-2010	Amend	1-1-2011
333-002-0170	3-1-2011	Amend	4-1-2011	333-500-0020	12-15-2010	Amend	1-1-2011
333-002-0180	3-1-2011	Amend	4-1-2011	333-500-0025	12-15-2010	Amend	1-1-2011
333-002-0190	3-1-2011	Amend	4-1-2011	333-500-0030	12-15-2010	Amend	1-1-2011
333-002-0200	3-1-2011	Amend	4-1-2011	333-500-0031	12-15-2010	Adopt	1-1-2011
333-002-0210	3-1-2011	Amend	4-1-2011	333-500-0034	12-15-2010	Amend	1-1-2011
333-002-0220	3-1-2011	Amend	4-1-2011	333-500-0040	12-15-2010	Amend	1-1-2011
333-002-0230	3-1-2011	Amend	4-1-2011	333-500-0065	12-15-2010	Amend	1-1-2011
333-005-0000	1-1-2011	Am. & Ren.	2-1-2011	333-501-0010	12-15-2010	Amend	1-1-2011
333-005-0010	1-1-2011	Am. & Ren.	2-1-2011	333-501-0015	12-15-2010	Amend	1-1-2011
333-005-0020	1-1-2011	Am. & Ren.	2-1-2011	333-501-0035	12-15-2010	Amend	1-1-2011
333-005-0030	1-1-2011	Am. & Ren.	2-1-2011	333-501-0040	12-15-2010	Amend	1-1-2011
333-005-0040	1-1-2011	Am. & Ren.	2-1-2011	333-501-0045	12-15-2010	Amend	1-1-2011
333-005-0050	1-1-2011	Am. & Ren.	2-1-2011	333-501-0055	12-15-2010	Amend	1-1-2011
333-005-0060	1-1-2011	Am. & Ren.	2-1-2011	333-501-0060	12-15-2010	Adopt	1-1-2011
333-008-0020	12-28-2010	Amend	2-1-2011	333-505-0005	12-15-2010	Amend	1-1-2011
333-008-0020(T)	12-28-2010	Repeal	2-1-2011	333-505-0020	12-15-2010	Amend	1-1-2011
333-008-0040	12-28-2010	Amend	2-1-2011	333-505-0030	12-15-2010	Amend	1-1-2011
333-008-0045	12-28-2010	Adopt	2-1-2011	333-505-0033	12-15-2010	Amend	1-1-2011
333-012-0250	3-29-2011	Am. & Ren.	5-1-2011	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
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333-076-0109	12-15-2010	Amend	1-1-2011	335-001-0009	2-1-2011	Amend	3-1-2011
333-076-0111	12-15-2010	Amend	1-1-2011	335-060-0005	2-1-2011	Amend	3-1-2011
333-076-0114	12-15-2010	Amend	1-1-2011	335-060-0010	2-1-2011	Amend	3-1-2011
333-076-0115	12-15-2010	Amend	1-1-2011	335-060-0030	2-1-2011	Amend	3-1-2011
333-076-0125	12-15-2010	Amend	1-1-2011	335-070-0020	2-1-2011	Amend	3-1-2011
333-076-0130	12-15-2010	Amend	1-1-2011	335-070-0055	2-1-2011	Amend	3-1-2011

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335-095-0030	2-1-2011	Amend	3-1-2011	340-244-0242	2-24-2011	Amend	4-1-2011
335-095-0040	2-1-2011	Amend	3-1-2011	340-244-0244	2-24-2011	Amend	4-1-2011
335-095-0055	2-1-2011	Repeal	3-1-2011	340-244-0248	2-24-2011	Amend	4-1-2011
338-005-0030	3-1-2011	Amend(T)	4-1-2011	340-262-0010	3-15-2011	Repeal	4-1-2011
338-005-0030	3-4-2011	Amend(T)	4-1-2011	340-262-0020	3-15-2011	Repeal	4-1-2011
340-012-0054	3-15-2011	Amend	4-1-2011	340-262-0030	3-15-2011	Repeal	4-1-2011
340-012-0140	3-15-2011	Amend	4-1-2011	340-262-0040	3-15-2011	Repeal	4-1-2011
340-016-0080	12-20-2010	Amend	2-1-2011	340-262-0050	3-15-2011	Repeal	4-1-2011
340-016-0088	12-20-2010	Adopt	2-1-2011	340-262-0100	3-15-2011	Repeal	4-1-2011
340-016-0100	12-20-2010	Repeal	2-1-2011	340-262-0110	3-15-2011	Repeal	4-1-2011
340-016-0110	12-20-2010	Repeal	2-1-2011	340-262-0120	3-15-2011	Repeal	4-1-2011
340-016-0120	12-20-2010	Repeal	2-1-2011	340-262-0130	3-15-2011	Repeal	4-1-2011
340-016-0130	12-20-2010	Repeal	2-1-2011	340-262-0200	3-15-2011	Repeal	4-1-2011
340-016-0140	12-20-2010	Repeal	2-1-2011	340-262-0210	3-15-2011	Repeal	4-1-2011
340-016-0150	12-20-2010	Repeal	2-1-2011	340-262-0220	3-15-2011	Repeal	4-1-2011
340-016-0210	12-20-2010	Amend	2-1-2011	340-262-0230	3-15-2011	Repeal	4-1-2011
340-041-0033	12-21-2010	Amend	2-1-2011	340-262-0240	3-15-2011	Repeal	4-1-2011
340-045-0100	3-15-2011	Amend(T)	4-1-2011	340-262-0250	3-15-2011	Repeal	4-1-2011
340-141-0010	12-23-2010	Amend	2-1-2011	340-262-0300	3-15-2011	Repeal	4-1-2011
340-143-0001	3-17-2011	Amend	5-1-2011	340-262-0310	3-15-2011	Repeal	4-1-2011
340-143-0005	3-17-2011	Amend	5-1-2011	340-262-0320	3-15-2011	Repeal	4-1-2011
340-143-0010	3-17-2011	Amend	5-1-2011	340-262-0330	3-15-2011	Repeal	4-1-2011
340-143-0020	3-17-2011	Amend	5-1-2011	340-262-0400	3-15-2011	Adopt	4-1-2011
340-143-0030	3-17-2011	Adopt	5-1-2011	340-262-0450	3-15-2011	Adopt	4-1-2011
340-143-0040	3-17-2011	Adopt	5-1-2011	340-262-0500	3-15-2011	Adopt	4-1-2011
340-143-0050	3-17-2011	Adopt	5-1-2011	340-262-0600	3-15-2011	Adopt	4-1-2011
340-143-0060	3-17-2011	Adopt	5-1-2011	340-262-0700	3-15-2011	Adopt	4-1-2011
340-200-0040	12-10-2010	Amend	1-1-2011	340-262-0800	3-15-2011	Adopt	4-1-2011
340-200-0040	2-24-2011	Amend	4-1-2011	340-262-0900	3-15-2011	Adopt	4-1-2011
340-200-0040	3-15-2011	Amend	4-1-2011	350-030-0015	5-1-2011	Amend	5-1-2011
340-216-0020	2-24-2011	Amend	4-1-2011	350-030-0020	5-1-2011	Amend	5-1-2011
340-216-0060	2-24-2011	Amend	4-1-2011	350-030-0025	5-1-2011	Amend	5-1-2011
340-216-0064	2-24-2011	Amend	4-1-2011	350-030-0030	5-1-2011	Amend	5-1-2011
340-220-0030	12-20-2010	Amend	2-1-2011	350-030-0060	5-1-2011	Amend	5-1-2011
340-220-0040	12-20-2010	Amend	2-1-2011	350-030-0080	5-1-2011	Amend	5-1-2011
340-220-0050	12-20-2010	Amend	2-1-2011	350-040-0010	5-1-2011	Amend	5-1-2011
340-223-0010	12-10-2010	Amend	1-1-2011	350-040-0020	5-1-2011	Amend	5-1-2011
340-223-0020	12-10-2010	Amend	1-1-2011	350-040-0050	5-1-2011	Amend	5-1-2011
340-223-0030	12-10-2010	Amend	1-1-2011	350-040-0055	5-1-2011	Adopt	5-1-2011
340-223-0040	12-10-2010	Amend	1-1-2011	350-040-0060	5-1-2011	Amend	5-1-2011
340-223-0050	12-10-2010	Amend	1-1-2011	350-040-0065	5-1-2011	Amend	5-1-2011
340-223-0060	12-10-2010	Adopt	1-1-2011	350-040-0070	5-1-2011	Amend	5-1-2011
340-223-0070	12-10-2010	Adopt	1-1-2011	350-040-0080	5-1-2011	Amend	5-1-2011
340-223-0080	12-10-2010	Adopt	1-1-2011	350-050-0020	5-1-2011	Amend	5-1-2011
340-230-0030	2-24-2011	Amend	4-1-2011	350-050-0035	5-1-2011	Amend	5-1-2011
340-230-0300	2-24-2011	Amend	4-1-2011	350-050-0040	5-1-2011	Amend	5-1-2011
340-230-0400	2-24-2011	Repeal	4-1-2011	350-050-0045	5-1-2011	Amend	5-1-2011
340-230-0410	2-24-2011	Repeal	4-1-2011	350-050-0060	5-1-2011	Amend	5-1-2011
340-238-0040	2-24-2011	Amend	4-1-2011	350-050-0070	5-1-2011	Amend	5-1-2011
340-238-0060	2-24-2011	Amend	4-1-2011	350-050-0080	5-1-2011	Amend	5-1-2011
340-242-0500	2-24-2011	Amend	4-1-2011	350-050-0085	5-1-2011	Amend	5-1-2011
340-244-0030	2-24-2011	Amend	4-1-2011	350-050-0090	5-1-2011	Amend	5-1-2011
340-244-0220	2-24-2011	Amend	4-1-2011	350-050-0100	5-1-2011	Amend	5-1-2011
340-244-0234	2-24-2011	Amend	4-1-2011	350-060-0040	5-1-2011	Amend	5-1-2011
340-244-0236	2-24-2011	Amend	4-1-2011	350-060-0042	5-1-2011	Amend	5-1-2011

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350-060-0047	5-1-2011	Adopt	5-1-2011	407-020-0000	2-1-2011	Am. & Ren.	3-1-2011
350-060-0050	5-1-2011	Amend	5-1-2011	407-020-0005	2-1-2011	Am. & Ren.	3-1-2011
350-060-0055	5-1-2011	Amend	5-1-2011	407-020-0010	2-1-2011	Am. & Ren.	3-1-2011
350-060-0060	5-1-2011	Amend	5-1-2011	407-020-0015	2-1-2011	Am. & Ren.	3-1-2011
350-060-0070	5-1-2011	Amend	5-1-2011	407-045-0260	1-1-2011	Amend	2-1-2011
350-060-0080	5-1-2011	Amend	5-1-2011	407-045-0260(T)	1-1-2011	Repeal	2-1-2011
350-060-0100	5-1-2011	Amend	5-1-2011	407-045-0820	1-1-2011	Amend	2-1-2011
350-060-0110	5-1-2011	Amend	5-1-2011	407-045-0820(T)	1-1-2011	Repeal	2-1-2011
350-060-0120	5-1-2011	Amend	5-1-2011	409-015-0010	3-1-2011	Amend	3-1-2011
350-060-0130	5-1-2011	Amend	5-1-2011	409-030-0000	3-1-2011	Renumber	3-1-2011
350-060-0160	5-1-2011	Amend	5-1-2011	409-030-0005	3-1-2011	Renumber	3-1-2011
350-060-0170	5-1-2011	Amend	5-1-2011	409-030-0010	3-1-2011	Renumber	3-1-2011
350-060-0190	5-1-2011	Amend	5-1-2011	409-030-0020	3-1-2011	Renumber	3-1-2011
350-060-0200	5-1-2011	Amend	5-1-2011	409-030-0030	3-1-2011	Renumber	3-1-2011
350-060-0205	5-1-2011	Amend	5-1-2011	409-030-0050	3-1-2011	Renumber	3-1-2011
350-060-0210	5-1-2011	Amend	5-1-2011	409-030-0065	3-1-2011	Renumber	3-1-2011
350-070-0040	5-1-2011	Amend	5-1-2011	409-110-0000	2-1-2011	Amend	3-1-2011
350-070-0042	5-1-2011	Amend	5-1-2011	409-110-0005	2-1-2011	Amend	3-1-2011
350-070-0045	5-1-2011	Amend	5-1-2011	409-110-0010	2-1-2011	Amend	3-1-2011
350-070-0046	5-1-2011	Adopt	5-1-2011	409-110-0015	2-1-2011	Amend	3-1-2011
350-070-0050	5-1-2011	Amend	5-1-2011	409-110-0020	2-1-2011	Amend	3-1-2011
350-070-0070	5-1-2011	Amend	5-1-2011	410-050-0401	2-1-2011	Renumber	3-1-2011
350-070-0080	5-1-2011	Amend	5-1-2011	410-050-0411	2-1-2011	Renumber	3-1-2011
350-070-0090	5-1-2011	Amend	5-1-2011	410-050-0421	2-1-2011	Renumber	3-1-2011
350-070-0120	5-1-2011	Amend	5-1-2011	410-050-0431	2-1-2011	Renumber	3-1-2011
350-070-0170	5-1-2011	Amend	5-1-2011	410-050-0451	2-1-2011	Renumber	3-1-2011
350-070-0200	5-1-2011	Amend	5-1-2011	410-050-0461	2-1-2011	Renumber	3-1-2011
350-070-0210	5-1-2011	Amend	5-1-2011	410-050-0471	2-1-2011	Renumber	3-1-2011
350-070-0220	5-1-2011	Amend	5-1-2011	410-050-0481	2-1-2011	Renumber	3-1-2011
350-070-0225	5-1-2011	Amend	5-1-2011	410-050-0491	2-1-2011	Renumber	3-1-2011
350-081-0017	5-1-2011	Adopt	5-1-2011	410-050-0501	2-1-2011	Renumber	3-1-2011
350-081-0020	5-1-2011	Amend	5-1-2011	410-050-0511	2-1-2011	Renumber	3-1-2011
350-081-0082	5-1-2011	Amend	5-1-2011	410-050-0521	2-1-2011	Renumber	3-1-2011
350-081-0540	5-1-2011	Amend	5-1-2011	410-050-0531	2-1-2011	Renumber	3-1-2011
350-081-0560	5-1-2011	Amend	5-1-2011	410-050-0541	2-1-2011	Renumber	3-1-2011
350-081-0570	5-1-2011	Amend	5-1-2011	410-050-0551	2-1-2011	Renumber	3-1-2011
350-081-0580	5-1-2011	Amend	5-1-2011	410-050-0561	2-1-2011	Renumber	3-1-2011
350-081-0590	5-1-2011	Amend	5-1-2011	410-050-0591	2-1-2011	Renumber	3-1-2011
350-120-0025	5-1-2011	Repeal	5-1-2011	410-050-0601	2-1-2011	Renumber	3-1-2011
350-120-0030	5-1-2011	Repeal	5-1-2011	410-120-0030	1-1-2011	Amend	2-1-2011
350-120-0040	5-1-2011	Repeal	5-1-2011	410-120-1195	1-1-2011	Amend	2-1-2011
350-120-0050	5-1-2011	Amend	5-1-2011	410-120-1200	1-1-2011	Amend	2-1-2011
407-007-0200	4-15-2011	Amend(T)	5-1-2011	410-120-1230	1-1-2011	Amend	2-1-2011
407-007-0210	4-15-2011	Amend(T)	5-1-2011	410-120-1280	1-1-2011	Amend	2-1-2011
407-007-0220	4-15-2011	Amend(T)	5-1-2011	410-120-1295	1-1-2011	Amend	2-1-2011
407-007-0230	4-15-2011	Amend(T)	5-1-2011	410-120-1340	1-1-2011	Amend	2-1-2011
407-007-0240	4-15-2011	Amend(T)	5-1-2011	410-121-0000	1-1-2011	Amend	2-1-2011
407-007-0250	4-15-2011	Amend(T)	5-1-2011	410-121-0030	1-1-2011	Amend	2-1-2011
407-007-0290	4-15-2011	Amend(T)	5-1-2011	410-121-0030	3-1-2011	Amend(T)	4-1-2011
407-007-0300	4-15-2011	Amend(T)	5-1-2011	410-121-0040	1-1-2011	Amend	2-1-2011
407-007-0315	4-15-2011	Amend(T)	5-1-2011	410-121-0149	1-1-2011	Amend	2-1-2011
407-007-0320	4-15-2011	Amend(T)	5-1-2011	410-121-0155	1-1-2011	Amend	2-1-2011
407-007-0325	4-15-2011	Amend(T)	5-1-2011	410-121-0160	1-1-2011	Amend	2-1-2011
407-007-0330	4-15-2011	Amend(T)	5-1-2011	410-121-0320	1-1-2011	Repeal	2-1-2011
407-007-0340	4-15-2011	Amend(T)	5-1-2011	410-122-0080	3-25-2011	Amend	5-1-2011

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410-122-0180	3-25-2011	Amend	5-1-2011	410-138-0020	1-1-2011	Amend	2-1-2011
410-122-0180(T)	3-25-2011	Repeal	5-1-2011	410-138-0040	1-1-2011	Amend	2-1-2011
410-123-1000	1-1-2011	Amend	1-1-2011	410-138-0060	1-1-2011	Amend	2-1-2011
410-123-1085	1-1-2011	Repeal	1-1-2011	410-138-0080	1-1-2011	Amend	2-1-2011
410-123-1220	1-1-2011	Amend	1-1-2011	410-138-0300	1-1-2011	Repeal	2-1-2011
410-123-1260	1-1-2011	Amend	1-1-2011	410-138-0360	1-1-2011	Repeal	2-1-2011
410-123-1540	1-1-2011	Amend	1-1-2011	410-138-0380	1-1-2011	Repeal	2-1-2011
410-125-0047	1-1-2011	Amend	1-1-2011	410-138-0390	1-1-2011	Amend	2-1-2011
410-125-0080	1-1-2011	Amend	1-1-2011	410-138-0400	1-1-2011	Repeal	2-1-2011
410-125-0085	1-1-2011	Amend	1-1-2011	410-138-0420	1-1-2011	Amend	2-1-2011
410-125-0100	1-1-2011	Repeal	1-1-2011	410-138-0440	1-1-2011	Repeal	2-1-2011
410-125-0140	1-1-2011	Amend	1-1-2011	410-138-0460	1-1-2011	Repeal	2-1-2011
410-125-0360	1-1-2011	Amend	1-1-2011	410-138-0500	1-1-2011	Repeal	2-1-2011
410-125-0410	1-1-2011	Amend	1-1-2011	410-138-0540	1-1-2011	Repeal	2-1-2011
410-125-0450	1-1-2011	Adopt	1-1-2011	410-138-0560	1-1-2011	Repeal	2-1-2011
410-125-1020	1-1-2011	Amend	1-1-2011	410-138-0600	1-1-2011	Repeal	2-1-2011
410-125-2000	1-1-2011	Amend	1-1-2011	410-138-0640	1-1-2011	Repeal	2-1-2011
410-125-2020	1-1-2011	Amend	1-1-2011	410-138-0660	1-1-2011	Repeal	2-1-2011
410-125-2030	1-1-2011	Amend	1-1-2011	410-138-0680	1-1-2011	Repeal	2-1-2011
410-127-0020	1-1-2011	Amend	1-1-2011	410-138-0700	1-1-2011	Repeal	2-1-2011
410-127-0060	1-1-2011	Amend	1-1-2011	410-138-0710	1-1-2011	Repeal	2-1-2011
410-127-0065	1-1-2011	Amend	1-1-2011	410-138-0740	1-1-2011	Repeal	2-1-2011
410-127-0080	1-1-2011	Amend	1-1-2011	410-138-0760	1-1-2011	Repeal	2-1-2011
410-129-0220	3-25-2011	Amend	5-1-2011	410-138-0780	1-1-2011	Repeal	2-1-2011
410-129-0220(T)	3-25-2011	Repeal	5-1-2011	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	4-1-2011	Amend	5-1-2011
410-136-0080	1-1-2011	Amend	1-1-2011	410-141-0520(T)	1-1-2011	Repeal	2-1-2011
410-136-0140	1-1-2011	Amend	1-1-2011	410-142-0020	1-1-2011	Amend	1-1-2011
410-136-0160	1-1-2011	Amend	1-1-2011	410-142-0100	1-1-2011	Amend	1-1-2011
410-136-0180	1-1-2011	Amend	1-1-2011	410-142-0110	1-1-2011	Adopt	1-1-2011
410-136-0200	1-1-2011	Amend	1-1-2011	410-142-0200	1-1-2011	Amend	1-1-2011
410-136-0220	1-1-2011	Amend	1-1-2011	410-142-0225	1-1-2011	Amend	1-1-2011
410-136-0240	1-1-2011	Amend	1-1-2011	410-142-0240	1-1-2011	Amend	1-1-2011
410-136-0300	1-1-2011	Amend	1-1-2011	410-142-0280	1-1-2011	Amend	1-1-2011
410-136-0320	1-1-2011	Amend	1-1-2011	410-142-0300	1-1-2011	Amend	1-1-2011
410-136-0340	1-1-2011	Amend	1-1-2011	410-146-0021	1-1-2011	Amend	1-1-2011
410-136-0350	1-1-2011	Amend	1-1-2011	410-146-0085	1-1-2011	Amend	1-1-2011
410-136-0440	1-1-2011	Amend	1-1-2011	410-146-0086	1-1-2011	Amend	1-1-2011
410-136-0800	1-1-2011	Amend	1-1-2011	410-146-0120	1-1-2011	Amend	1-1-2011
410-136-0820	1-1-2011	Amend	1-1-2011	410-146-0140	1-1-2011	Repeal	1-1-2011
410-136-0840	1-1-2011	Amend	1-1-2011	410-147-0120	1-1-2011	Amend	1-1-2011
410-136-0860	1-1-2011	Amend	1-1-2011	410-147-0140	1-1-2011	Amend	1-1-2011
410-138-0000	1-1-2011	Amend	2-1-2011	410-147-0200	1-1-2011	Amend	1-1-2011
410-138-0005	1-1-2011	Amend	2-1-2011	410-147-0220	1-1-2011	Repeal	1-1-2011
410-138-0007	1-1-2011	Amend	2-1-2011	410-147-0320	1-1-2011	Amend	1-1-2011

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410-147-0610	1-1-2011	Repeal	1-1-2011	411-345-0100	2-7-2011	Amend(T)	3-1-2011
411-031-0020	12-1-2010	Amend	1-1-2011	411-345-0260	2-7-2011	Amend(T)	3-1-2011
411-031-0020(T)	12-1-2010	Repeal	1-1-2011	411-346-0110	2-10-2011	Amend(T)	3-1-2011
411-031-0040	12-1-2010	Amend	1-1-2011	411-346-0150	2-10-2011	Amend(T)	3-1-2011
411-031-0040(T)	12-1-2010	Repeal	1-1-2011	411-346-0160	2-10-2011	Amend(T)	3-1-2011
411-034-0010	1-1-2011	Amend	2-1-2011	411-346-0165	2-10-2011	Amend(T)	3-1-2011
411-034-0020	1-1-2011	Amend	2-1-2011	411-346-0190	2-10-2011	Amend(T)	3-1-2011
411-050-0412	1-1-2011	Amend	2-1-2011	411-346-0200	2-10-2011	Amend(T)	3-1-2011
411-050-0499	1-1-2011	Repeal	2-1-2011	411-346-0220	2-10-2011	Amend(T)	3-1-2011
411-054-0005	4-1-2011	Amend	5-1-2011	411-360-0070	1-1-2011	Amend	2-1-2011
411-054-0005(T)	4-1-2011	Repeal	5-1-2011	411-360-0070(T)	1-1-2011	Repeal	2-1-2011
411-054-0012	4-1-2011	Amend	5-1-2011	413-010-0055	12-29-2010	Amend	2-1-2011
411-054-0012(T)	4-1-2011	Repeal	5-1-2011	413-010-0055(T)	12-29-2010	Repeal	2-1-2011
411-067-0000	4-1-2011	Amend	5-1-2011	413-010-0081	12-29-2010	Amend	2-1-2011
411-067-0010	4-1-2011	Amend	5-1-2011	413-010-0082	12-29-2010	Amend	2-1-2011
411-067-0020	4-1-2011	Amend	5-1-2011	413-010-0083	12-29-2010	Amend	2-1-2011
411-067-0030	4-1-2011	Repeal	5-1-2011	413-010-0084	12-29-2010	Repeal	2-1-2011
411-067-0050	4-1-2011	Amend	5-1-2011	413-010-0085	12-29-2010	Amend	2-1-2011
411-067-0055	4-1-2011	Amend	5-1-2011	413-010-0086	12-29-2010	Repeal	2-1-2011
411-067-0060	4-1-2011	Amend	5-1-2011	413-010-0360	12-29-2010	Repeal	2-1-2011
411-067-0065	4-1-2011	Adopt	5-1-2011	413-010-0370	12-29-2010	Repeal	2-1-2011
411-067-0070	4-1-2011	Amend	5-1-2011	413-010-0380	12-29-2010	Repeal	2-1-2011
411-067-0080	4-1-2011	Amend	5-1-2011	413-040-0240	1-4-2011	Amend	2-1-2011
411-067-0083	4-1-2011	Amend	5-1-2011	413-040-0240(T)	1-4-2011	Repeal	2-1-2011
411-067-0086	4-1-2011	Adopt	5-1-2011	413-070-0500	12-29-2010	Amend	2-1-2011
411-067-0087	4-1-2011	Repeal	5-1-2011	413-070-0505	12-29-2010	Amend	2-1-2011
411-067-0090	4-1-2011	Amend	5-1-2011	413-070-0510	12-29-2010	Amend	2-1-2011
411-067-0100	4-1-2011	Amend	5-1-2011	413-070-0514	12-29-2010	Adopt	2-1-2011
411-304-0035	1-1-2011	Amend	2-1-2011	413-070-0514	3-22-2011	Amend(T)	5-1-2011
411-308-0020	2-1-2011	Amend(T)	3-1-2011	413-070-0515	12-29-2010	Am. & Ren.	2-1-2011
411-308-0050	2-1-2011	Amend(T)	3-1-2011	413-070-0516	12-29-2010	Adopt	2-1-2011
411-308-0060	2-1-2011	Amend(T)	3-1-2011	413-070-0516	3-22-2011	Amend(T)	5-1-2011
411-308-0070	2-1-2011	Amend(T)	3-1-2011	413-070-0517	12-29-2010	Repeal	2-1-2011
411-308-0080	2-1-2011	Amend(T)	3-1-2011	413-070-0518	12-29-2010	Adopt	2-1-2011
411-308-0090	2-1-2011	Amend(T)	3-1-2011	413-070-0518	3-22-2011	Amend(T)	5-1-2011
411-308-0120	2-1-2011	Amend(T)	3-1-2011	413-070-0519	12-29-2010	Adopt	2-1-2011
411-320-0020	1-1-2011	Amend	2-1-2011	413-070-0519	3-22-2011	Amend(T)	5-1-2011
411-320-0020(T)	1-1-2011	Repeal	2-1-2011	413-070-0520	12-29-2010	Amend	2-1-2011
411-320-0030	12-1-2010	Amend(T)	1-1-2011	413-070-0524	12-29-2010	Amend	2-1-2011
411-320-0045	12-1-2010	Amend(T)	1-1-2011	413-070-0532	12-29-2010	Amend	2-1-2011
411-320-0080	1-1-2011	Amend	2-1-2011	413-070-0536	12-29-2010	Amend	2-1-2011
411-320-0080(T)	1-1-2011	Repeal	2-1-2011	413-070-0540	12-29-2010	Amend	2-1-2011
411-320-0130	12-1-2010	Amend(T)	1-1-2011	413-070-0548	12-29-2010	Am. & Ren.	2-1-2011
411-320-0170	12-1-2010	Amend(T)	1-1-2011	413-070-0550	12-29-2010	Amend	2-1-2011
411-320-0175	1-1-2011	Amend	2-1-2011	413-070-0550	3-22-2011	Amend(T)	5-1-2011
411-320-0175(T)	1-1-2011	Repeal	2-1-2011	413-070-0552	12-29-2010	Amend	2-1-2011
411-328-0570	2-7-2011	Amend(T)	3-1-2011	413-070-0556	12-29-2010	Amend	2-1-2011
411-328-0810	2-7-2011	Amend(T)	3-1-2011	413-070-0565	12-29-2010	Amend	2-1-2011
411-335-0030	2-7-2011	Amend(T)	3-1-2011	413-070-0570	12-28-2010	Adopt	2-1-2011
411-335-0050	2-7-2011	Amend(T)	3-1-2011	413-070-0572	12-28-2010	Adopt	2-1-2011
411-335-0380	2-7-2011	Amend(T)	3-1-2011	413-070-0574	12-28-2010	Adopt	2-1-2011
411-340-0030	11-17-2010	Amend(T)	1-1-2011	413-070-0600	12-29-2010	Amend	2-1-2011
411-340-0040	11-17-2010	Amend(T)	1-1-2011	413-070-0620	12-29-2010	Amend	2-1-2011
411-340-0060	11-17-2010	Amend(T)	1-1-2011	413-070-0625	12-29-2010	Amend	2-1-2011
411-340-0120	11-17-2010	Amend(T)	1-1-2011	413-070-0630	12-29-2010	Amend	2-1-2011

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413-070-0645	12-29-2010	Amend	2-1-2011	413-120-0500	12-29-2010	Amend	2-1-2011
413-070-0651	12-29-2010	Adopt(T)	2-1-2011	413-120-0510	12-29-2010	Amend	2-1-2011
413-070-0655	12-29-2010	Adopt(T)	2-1-2011	413-120-0520	12-29-2010	Repeal	2-1-2011
413-070-0660	12-29-2010	Adopt(T)	2-1-2011	413-120-0521	12-29-2010	Adopt	2-1-2011
413-070-0665	12-29-2010	Adopt(T)	2-1-2011	413-120-0530	12-29-2010	Repeal	2-1-2011
413-070-0670	12-29-2010	Adopt(T)	2-1-2011	413-120-0540	12-29-2010	Repeal	2-1-2011
413-110-0100	12-29-2010	Amend	2-1-2011	413-120-0541	12-29-2010	Adopt	2-1-2011
413-110-0110	12-29-2010	Amend	2-1-2011	413-120-0550	12-29-2010	Am. & Ren.	2-1-2011
413-110-0120	12-29-2010	Repeal	2-1-2011	413-120-0570	12-29-2010	Adopt	2-1-2011
413-110-0130	12-29-2010	Amend	2-1-2011	413-120-0590	12-29-2010	Adopt	2-1-2011
413-110-0132	12-29-2010	Adopt	2-1-2011	413-120-0595	12-29-2010	Adopt	2-1-2011
413-110-0132	4-4-2011	Amend(T)	5-1-2011	413-120-0700	12-29-2010	Adopt	2-1-2011
413-110-0140	12-29-2010	Repeal	2-1-2011	413-120-0710	12-29-2010	Adopt	2-1-2011
413-110-0150	12-29-2010	Adopt	2-1-2011	413-120-0720	12-29-2010	Adopt	2-1-2011
413-120-0000	12-29-2010	Amend	2-1-2011	413-120-0730	12-29-2010	Adopt	2-1-2011
413-120-0010	12-29-2010	Amend	2-1-2011	413-120-0730	3-22-2011	Amend(T)	5-1-2011
413-120-0015	12-29-2010	Repeal	2-1-2011	413-120-0750	12-29-2010	Adopt	2-1-2011
413-120-0020	12-29-2010	Amend	2-1-2011	413-120-0750	3-22-2011	Amend(T)	5-1-2011
413-120-0020	3-22-2011	Amend(T)	5-1-2011	413-120-0760	12-29-2010	Adopt	2-1-2011
413-120-0021	12-29-2010	Adopt	2-1-2011	413-120-0760	3-22-2011	Amend(T)	5-1-2011
413-120-0021	3-22-2011	Amend(T)	5-1-2011	413-120-0800	12-29-2010	Amend	2-1-2011
413-120-0025	12-29-2010	Adopt	2-1-2011	413-120-0810	12-29-2010	Amend	2-1-2011
413-120-0030	12-29-2010	Repeal	2-1-2011	413-120-0820	12-29-2010	Repeal	2-1-2011
413-120-0033	12-29-2010	Am. & Ren.	2-1-2011	413-120-0830	12-29-2010	Amend	2-1-2011
413-120-0035	12-29-2010	Amend	2-1-2011	413-120-0840	12-29-2010	Adopt	2-1-2011
413-120-0035	3-22-2011	Amend(T)	5-1-2011	413-120-0850	12-29-2010	Adopt	2-1-2011
413-120-0040	12-29-2010	Repeal	2-1-2011	413-120-0860	12-29-2010	Adopt	2-1-2011
413-120-0045	12-29-2010	Am. & Ren.	2-1-2011	413-120-0870	12-29-2010	Adopt	2-1-2011
413-120-0053	12-29-2010	Adopt	2-1-2011	413-120-0900	12-28-2010	Adopt	2-1-2011
413-120-0057	12-29-2010	Adopt	2-1-2011	413-120-0905	12-28-2010	Adopt	2-1-2011
413-120-0060	12-29-2010	Amend	2-1-2011	413-120-0910	12-28-2010	Adopt	2-1-2011
413-120-0060	3-22-2011	Amend(T)	5-1-2011	413-120-0920	12-28-2010	Adopt	2-1-2011
413-120-0075	12-29-2010	Am. & Ren.	2-1-2011	413-120-0925	12-28-2010	Adopt	2-1-2011
413-120-0080	12-29-2010	Repeal	2-1-2011	413-120-0930	12-28-2010	Adopt	2-1-2011
413-120-0190	12-29-2010	Amend	2-1-2011	413-120-0940	12-28-2010	Adopt	2-1-2011
413-120-0195	12-29-2010	Amend	2-1-2011	413-120-0945	12-28-2010	Adopt	2-1-2011
413-120-0200	12-29-2010	Repeal	2-1-2011	413-120-0950	12-28-2010	Adopt	2-1-2011
413-120-0210	12-29-2010	Repeal	2-1-2011	413-120-0960	12-28-2010	Adopt	2-1-2011
413-120-0220	12-29-2010	Amend	2-1-2011	413-120-0970	12-28-2010	Adopt	2-1-2011
413-120-0222	12-29-2010	Adopt	2-1-2011	413-130-0150	12-29-2010	Repeal	2-1-2011
413-120-0225	12-29-2010	Adopt	2-1-2011	413-130-0160	12-29-2010	Repeal	2-1-2011
413-120-0230	12-29-2010	Repeal	2-1-2011	413-130-0170	12-29-2010	Repeal	2-1-2011
413-120-0240	12-29-2010	Amend	2-1-2011	413-130-0180	12-29-2010	Repeal	2-1-2011
413-120-0243	12-29-2010	Adopt	2-1-2011	414-205-0055	1-1-2011	Amend	2-1-2011
413-120-0246	12-29-2010	Adopt	2-1-2011	414-205-0100	1-1-2011	Amend	2-1-2011
413-120-0250	12-29-2010	Repeal	2-1-2011	414-205-0110	1-1-2011	Amend	2-1-2011
413-120-0255	12-29-2010	Repeal	2-1-2011	414-205-0170	1-1-2011	Amend	2-1-2011
413-120-0260	12-29-2010	Repeal	2-1-2011	414-300-0005	1-1-2011	Amend	2-1-2011
413-120-0265	12-29-2010	Repeal	2-1-2011	414-300-0010	1-1-2011	Amend	2-1-2011
413-120-0270	12-29-2010	Repeal	2-1-2011	414-300-0015	1-1-2011	Amend	2-1-2011
413-120-0275	12-29-2010	Repeal	2-1-2011	414-300-0030	1-1-2011	Amend	2-1-2011
413-120-0280	12-29-2010	Repeal	2-1-2011	414-300-0040	1-1-2011	Amend	2-1-2011
413-120-0285	12-29-2010	Repeal	2-1-2011	414-300-0110	1-1-2011	Amend(T)	2-1-2011
413-120-0290	12-29-2010	Repeal	2-1-2011	414-300-0120	1-1-2011	Amend	2-1-2011
413-120-0300	12-29-2010	Repeal	2-1-2011	414-300-0250	1-1-2011	Amend	2-1-2011

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414-350-0010	1-1-2011	Amend	2-1-2011	415-054-0470(T)	3-9-2011	Repeal	4-1-2011
414-350-0020	1-1-2011	Amend	2-1-2011	415-054-0480	3-9-2011	Adopt	4-1-2011
414-350-0030	1-1-2011	Amend	2-1-2011	415-054-0480(T)	3-9-2011	Repeal	4-1-2011
414-350-0050	1-1-2011	Amend	2-1-2011	415-054-0490	3-9-2011	Adopt	4-1-2011
414-350-0060	1-1-2011	Amend	2-1-2011	415-054-0490(T)	3-9-2011	Repeal	4-1-2011
414-350-0090	1-1-2011	Amend	2-1-2011	415-054-0500	3-9-2011	Adopt	4-1-2011
414-350-0100	1-1-2011	Amend	2-1-2011	415-054-0500(T)	3-9-2011	Repeal	4-1-2011
414-350-0110	1-1-2011	Amend(T)	2-1-2011	415-054-0510	3-9-2011	Adopt	4-1-2011
414-350-0115	1-1-2011	Amend	2-1-2011	415-054-0510(T)	3-9-2011	Repeal	4-1-2011
414-350-0200	1-1-2011	Amend	2-1-2011	415-054-0520	3-9-2011	Adopt	4-1-2011
414-350-0210	1-1-2011	Amend	2-1-2011	415-054-0520(T)	3-9-2011	Repeal	4-1-2011
414-350-0375	1-1-2011	Amend	2-1-2011	415-054-0530	3-9-2011	Adopt	4-1-2011
414-350-0380	1-1-2011	Amend	2-1-2011	415-054-0540	3-9-2011	Adopt	4-1-2011
415-054-0005	3-9-2011	Repeal	4-1-2011	415-054-0550	3-9-2011	Adopt	4-1-2011
415-054-0010	3-9-2011	Repeal	4-1-2011	415-054-0560	3-9-2011	Adopt	4-1-2011
415-054-0015	3-9-2011	Repeal	4-1-2011	415-054-0570	3-9-2011	Adopt	4-1-2011
415-054-0017	3-9-2011	Repeal	4-1-2011	415-054-0580	3-9-2011	Adopt	4-1-2011
415-054-0018	3-9-2011	Repeal	4-1-2011	415-065-0055	2-11-2011	Amend(T)	3-1-2011
415-054-0045	3-9-2011	Repeal	4-1-2011	436-009-0003	4-1-2011	Amend	4-1-2011
415-054-0050	3-9-2011	Repeal	4-1-2011	436-009-0004	4-1-2011	Amend	4-1-2011
415-054-0055	3-9-2011	Repeal	4-1-2011	436-009-0005	4-1-2011	Amend	4-1-2011
415-054-0060	3-9-2011	Repeal	4-1-2011	436-009-0010	4-1-2011	Amend	4-1-2011
415-054-0070	3-9-2011	Repeal	4-1-2011	436-009-0020	4-1-2011	Amend	4-1-2011
415-054-0075	3-9-2011	Repeal	4-1-2011	436-009-0030	4-1-2011	Amend	4-1-2011
415-054-0076	3-9-2011	Repeal	4-1-2011	436-009-0040	4-1-2011	Amend	4-1-2011
415-054-0080	3-9-2011	Repeal	4-1-2011	436-009-0050	4-1-2011	Amend	4-1-2011
415-054-0090	3-9-2011	Repeal	4-1-2011	436-009-0070	4-1-2011	Amend	4-1-2011
415-054-0100	3-9-2011	Repeal	4-1-2011	436-009-0080	4-1-2011	Amend	4-1-2011
415-054-0200	3-9-2011	Repeal	4-1-2011	436-009-0090	4-1-2011	Amend	4-1-2011
415-054-0210	3-9-2011	Repeal	4-1-2011	436-009-0114	4-1-2011	Adopt	4-1-2011
415-054-0220	3-9-2011	Repeal	4-1-2011	436-009-0120	4-1-2011	Amend	4-1-2011
415-054-0230	3-9-2011	Repeal	4-1-2011	436-009-0125	4-1-2011	Amend	4-1-2011
415-054-0240	3-9-2011	Repeal	4-1-2011	436-009-0155	4-1-2011	Amend	4-1-2011
415-054-0300	3-9-2011	Repeal	4-1-2011	436-009-0160	4-1-2011	Amend	4-1-2011
415-054-0310	3-9-2011	Repeal	4-1-2011	436-009-0180	4-1-2011	Amend	4-1-2011
415-054-0320	3-9-2011	Repeal	4-1-2011	436-009-0199	4-1-2011	Am. & Ren.	4-1-2011
415-054-0330	3-9-2011	Repeal	4-1-2011	436-009-0200	4-1-2012	Adopt	4-1-2011
415-054-0340	3-9-2011	Repeal	4-1-2011	436-009-0205	4-1-2012	Adopt	4-1-2011
415-054-0350	3-9-2011	Repeal	4-1-2011	436-009-0206	4-1-2012	Adopt	4-1-2011
415-054-0360	3-9-2011	Repeal	4-1-2011	436-009-0207	4-1-2012	Adopt	4-1-2011
415-054-0370	3-9-2011	Repeal	4-1-2011	436-009-0210	4-1-2012	Adopt	4-1-2011
415-054-0400	3-9-2011	Adopt	4-1-2011	436-009-0215	4-1-2012	Adopt	4-1-2011
415-054-0400(T)	3-9-2011	Repeal	4-1-2011	436-009-0220	4-1-2012	Adopt	4-1-2011
415-054-0410	3-9-2011	Adopt	4-1-2011	436-009-0225	4-1-2012	Adopt	4-1-2011
415-054-0410(T)	3-9-2011	Repeal	4-1-2011	436-009-0230	4-1-2012	Adopt	4-1-2011
415-054-0420	3-9-2011	Adopt	4-1-2011	436-009-0235	4-1-2012	Adopt	4-1-2011
415-054-0420(T)	3-9-2011	Repeal	4-1-2011	436-009-0240	4-1-2012	Adopt	4-1-2011
415-054-0430	3-9-2011	Adopt	4-1-2011	436-009-0245	4-1-2012	Adopt	4-1-2011
415-054-0430(T)	3-9-2011	Repeal	4-1-2011	436-009-0250	4-1-2012	Adopt	4-1-2011
415-054-0440	3-9-2011	Adopt	4-1-2011	436-009-0255	4-1-2012	Adopt	4-1-2011
415-054-0440(T)	3-9-2011	Repeal	4-1-2011	436-009-0260	4-1-2012	Adopt	4-1-2011
415-054-0450	3-9-2011	Adopt	4-1-2011	436-009-0265	4-1-2012	Adopt	4-1-2011
415-054-0450(T)	3-9-2011	Repeal	4-1-2011	436-009-0270	4-1-2012	Adopt	4-1-2011
415-054-0460	3-9-2011	Adopt	4-1-2011	436-009-0275	4-1-2012	Adopt	4-1-2011
415-054-0460(T)	3-9-2011	Repeal	4-1-2011	436-009-0280	4-1-2012	Adopt	4-1-2011

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436-009-0290	4-1-2012	Adopt	4-1-2011	441-930-0250	1-1-2011	Amend	2-1-2011
436-010-0230	4-1-2011	Amend	4-1-2011	441-930-0255	1-1-2011	Adopt	2-1-2011
436-010-0265	4-1-2011	Amend	4-1-2011	441-930-0260	1-1-2011	Amend	2-1-2011
436-010-0290	4-1-2011	Amend	4-1-2011	441-930-0267	1-1-2011	Adopt	2-1-2011
436-060-0095	4-1-2011	Amend	4-1-2011	441-930-0270	1-1-2011	Amend	2-1-2011
437-003-0001	2-9-2011	Amend	3-1-2011	441-930-0280	1-1-2011	Repeal	2-1-2011
437-003-1423	2-9-2011	Adopt	3-1-2011	441-930-0290	1-1-2011	Amend	2-1-2011
437-003-3600	2-9-2011	Adopt	3-1-2011	441-930-0300	1-1-2011	Amend	2-1-2011
441-035-0010	2-15-2011	Amend	3-1-2011	441-930-0310	1-1-2011	Amend	2-1-2011
441-505-1135	12-1-2010	Adopt	1-1-2011	441-930-0320	1-1-2011	Amend	2-1-2011
441-674-0005	1-1-2011	Adopt	2-1-2011	441-930-0330	1-1-2011	Amend	2-1-2011
441-674-0005	1-20-2011	Amend	3-1-2011	441-930-0340	1-1-2011	Repeal	2-1-2011
441-674-0005(T)	1-1-2011	Repeal	2-1-2011	441-930-0350	1-1-2011	Amend	2-1-2011
441-674-0100	1-1-2011	Adopt	2-1-2011	441-930-0360	1-1-2011	Amend	2-1-2011
441-674-0100(T)	1-1-2011	Repeal	2-1-2011	442-005-0010	2-25-2011	Amend	4-1-2011
441-674-0120	1-1-2011	Adopt	2-1-2011	442-005-0030	1-5-2011	Amend(T)	2-1-2011
441-674-0120(T)	1-1-2011	Repeal	2-1-2011	442-005-0030(T)	1-5-2011	Suspend	2-1-2011
441-674-0130	1-1-2011	Adopt	2-1-2011	442-005-0050	2-25-2011	Amend	4-1-2011
441-674-0130(T)	1-1-2011	Repeal	2-1-2011	442-005-0060	2-25-2011	Amend	4-1-2011
441-674-0140	1-1-2011	Adopt	2-1-2011	442-005-0100	2-25-2011	Amend	4-1-2011
441-674-0140(T)	1-1-2011	Repeal	2-1-2011	442-010-0010	1-18-2011	Amend	3-1-2011
441-674-0210	1-1-2011	Adopt	2-1-2011	442-010-0010	3-8-2011	Amend	4-1-2011
441-674-0210(T)	1-1-2011	Repeal	2-1-2011	442-010-0020	1-18-2011	Amend	3-1-2011
441-674-0220	1-1-2011	Adopt	2-1-2011	442-010-0020	3-8-2011	Amend	4-1-2011
441-674-0220(T)	1-1-2011	Repeal	2-1-2011	442-010-0030	1-18-2011	Amend	3-1-2011
441-674-0230	1-1-2011	Adopt	2-1-2011	442-010-0030	3-8-2011	Amend	4-1-2011
441-674-0230(T)	1-1-2011	Repeal	2-1-2011	442-010-0040	1-18-2011	Amend	3-1-2011
441-674-0240	1-1-2011	Adopt	2-1-2011	442-010-0040	3-8-2011	Amend	4-1-2011
441-674-0240(T)	1-1-2011	Repeal	2-1-2011	442-010-0050	3-8-2011	Amend	4-1-2011
441-674-0250	1-1-2011	Adopt	2-1-2011	442-010-0055	1-18-2011	Amend	3-1-2011
441-674-0250(T)	1-1-2011	Repeal	2-1-2011	442-010-0055	3-8-2011	Amend	4-1-2011
441-674-0310	1-1-2011	Adopt	2-1-2011	442-010-0060	1-18-2011	Amend	3-1-2011
441-674-0310(T)	1-1-2011	Repeal	2-1-2011	442-010-0060	3-8-2011	Amend	4-1-2011
441-674-0510	1-20-2011	Adopt	3-1-2011	442-010-0065	3-8-2011	Adopt	4-1-2011
441-674-0520	1-20-2011	Adopt	3-1-2011	442-010-0070	1-18-2011	Amend	3-1-2011
441-674-0910	1-1-2011	Adopt	2-1-2011	442-010-0070	3-8-2011	Amend	4-1-2011
441-674-0910(T)	1-1-2011	Repeal	2-1-2011	442-010-0075	3-8-2011	Adopt	4-1-2011
441-674-0915	1-1-2011	Adopt	2-1-2011	442-010-0080	1-18-2011	Amend	3-1-2011
441-674-0915(T)	1-1-2011	Repeal	2-1-2011	442-010-0080	3-8-2011	Amend	4-1-2011
441-674-0920	1-1-2011	Adopt	2-1-2011	442-010-0085	3-8-2011	Adopt	4-1-2011
441-674-0920(T)	1-1-2011	Repeal	2-1-2011	442-010-0090	3-8-2011	Amend	4-1-2011
441-710-0035	12-1-2010	Amend	1-1-2011	442-010-0100	1-18-2011	Amend	3-1-2011
441-710-0071	12-1-2010	Adopt	1-1-2011	442-010-0100	3-8-2011	Amend	4-1-2011
441-710-0500	3-8-2011	Amend	4-1-2011	442-010-0110	1-18-2011	Amend	3-1-2011
441-930-0010	1-1-2011	Amend	2-1-2011	442-010-0110	3-8-2011	Amend	4-1-2011
441-930-0030	1-1-2011	Amend	2-1-2011	442-010-0120	1-18-2011	Amend	3-1-2011
441-930-0035	1-1-2011	Adopt	2-1-2011	442-010-0120	3-8-2011	Amend	4-1-2011
441-930-0045	1-1-2011	Adopt	2-1-2011	442-010-0130	1-18-2011	Amend	3-1-2011
441-930-0065	1-1-2011	Adopt	2-1-2011	442-010-0130	3-8-2011	Amend	4-1-2011
441-930-0068	1-1-2011	Adopt	2-1-2011	442-010-0140	1-18-2011	Amend	3-1-2011
441-930-0070	1-1-2011	Amend	2-1-2011	442-010-0140	3-8-2011	Amend	4-1-2011
441-930-0080	1-1-2011	Amend	2-1-2011	442-010-0150	1-18-2011	Amend	3-1-2011
441-930-0210	1-1-2011	Amend	2-1-2011	442-010-0150	3-8-2011	Amend	4-1-2011
441-930-0220	1-1-2011	Amend	2-1-2011	442-010-0160	1-18-2011	Amend	3-1-2011
441-930-0230	1-1-2011	Amend	2-1-2011	442-010-0160	3-8-2011	Amend	4-1-2011

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442-010-0170	3-8-2011	Amend	4-1-2011	461-130-0305	1-1-2011	Amend	2-1-2011
442-010-0180	1-18-2011	Amend	3-1-2011	461-130-0310	1-1-2011	Amend	2-1-2011
442-010-0180	3-8-2011	Amend	4-1-2011	461-130-0315	1-1-2011	Amend	2-1-2011
442-010-0190	1-18-2011	Amend	3-1-2011	461-130-0320	1-1-2011	Repeal	2-1-2011
442-010-0190	3-8-2011	Amend	4-1-2011	461-130-0323	1-1-2011	Repeal	2-1-2011
442-010-0200	1-18-2011	Adopt	3-1-2011	461-130-0325	1-1-2011	Repeal	2-1-2011
442-010-0200	3-8-2011	Amend	4-1-2011	461-130-0327	1-1-2011	Amend	2-1-2011
442-010-0210	1-18-2011	Adopt	3-1-2011	461-130-0328	1-1-2011	Amend	2-1-2011
442-010-0210	3-8-2011	Amend	4-1-2011	461-130-0330	1-1-2011	Amend	2-1-2011
442-010-0220	1-18-2011	Adopt	3-1-2011	461-130-0335	1-1-2011	Amend	2-1-2011
442-010-0220	3-8-2011	Amend	4-1-2011	461-135-0010	1-1-2011	Amend	2-1-2011
442-010-0230	1-18-2011	Adopt	3-1-2011	461-135-0095	4-1-2011	Amend	5-1-2011
442-010-0230	3-8-2011	Amend	4-1-2011	461-135-0095(T)	4-1-2011	Repeal	5-1-2011
442-010-0240	1-18-2011	Adopt	3-1-2011	461-135-0210	1-1-2011	Amend	2-1-2011
442-010-0240	3-8-2011	Amend	4-1-2011	461-135-0210(T)	1-1-2011	Repeal	2-1-2011
442-010-0250	1-18-2011	Adopt	3-1-2011	461-135-0400	1-1-2011	Amend	2-1-2011
442-010-0250	3-8-2011	Amend	4-1-2011	461-135-0400	2-16-2011	Amend(T)	4-1-2011
442-010-0260	1-18-2011	Adopt	3-1-2011	461-135-0400	3-22-2011	Amend(T)	5-1-2011
442-010-0260	3-8-2011	Amend	4-1-2011	461-135-0400(T)	1-1-2011	Repeal	2-1-2011
442-010-0270	1-18-2011	Adopt	3-1-2011	461-135-0400(T)	3-22-2011	Suspend	5-1-2011
442-010-0270	3-8-2011	Amend	4-1-2011	461-135-0780	1-1-2011	Amend	2-1-2011
442-010-0280	1-18-2011	Adopt	3-1-2011	461-135-0950	4-1-2011	Amend	5-1-2011
442-010-0280	3-8-2011	Amend	4-1-2011	461-135-1100	1-1-2011	Amend	2-1-2011
443-002-0070	1-26-2011	Amend	3-1-2011	461-135-1100(T)	1-1-2011	Repeal	2-1-2011
443-002-0190	1-26-2011	Amend	3-1-2011	461-135-1120	3-1-2011	Amend(T)	4-1-2011
459-005-0040	11-24-2010	Adopt	1-1-2011	461-135-1125	1-1-2011	Amend	2-1-2011
459-060-0020	11-24-2010	Amend	1-1-2011	461-135-1125(T)	1-1-2011	Repeal	2-1-2011
459-070-0100	2-2-2011	Amend	3-1-2011	461-135-1195	1-1-2011	Amend	2-1-2011
459-070-0110	2-2-2011	Amend	3-1-2011	461-135-1197	1-1-2011	Adopt	2-1-2011
461-001-0000	1-1-2011	Amend	2-1-2011	461-135-1250	1-1-2011	Amend	2-1-2011
461-025-0311	1-1-2011	Amend	2-1-2011	461-135-1250(T)	1-1-2011	Repeal	2-1-2011
461-025-0311(T)	1-1-2011	Repeal	2-1-2011	461-140-0110	4-1-2011	Amend	5-1-2011
461-101-0010	1-1-2011	Amend	2-1-2011	461-145-0140	1-1-2011	Amend(T)	2-1-2011
461-101-0010(T)	1-1-2011	Repeal	2-1-2011	461-145-0143	1-1-2011	Suspend	2-1-2011
461-110-0210	4-1-2011	Amend	5-1-2011	461-145-0220	1-1-2011	Amend(T)	2-1-2011
461-110-0310	4-1-2011	Amend	5-1-2011	461-145-0530	2-4-2011	Amend(T)	3-1-2011
461-110-0330	4-1-2011	Amend	5-1-2011	461-150-0055	1-1-2011	Amend	2-1-2011
461-110-0340	4-1-2011	Amend	5-1-2011	461-150-0055	1-1-2011	Amend(T)	2-1-2011
461-110-0350	4-1-2011	Amend	5-1-2011	461-150-0055	2-4-2011	Amend(T)	3-1-2011
461-110-0370	4-1-2011	Amend	5-1-2011	461-150-0055	4-1-2011	Amend	5-1-2011
461-110-0390	4-1-2011	Amend	5-1-2011	461-150-0055(T)	1-1-2011	Repeal	2-1-2011
461-110-0400	4-1-2011	Amend	5-1-2011	461-150-0055(T)	2-4-2011	Suspend	3-1-2011
461-110-0410	4-1-2011	Amend	5-1-2011	461-150-0055(T)	4-1-2011	Repeal	5-1-2011
461-110-0430	4-1-2011	Amend	5-1-2011	461-155-0030	1-1-2011	Amend	2-1-2011
461-110-0530	4-1-2011	Amend	5-1-2011	461-155-0030	1-1-2011	Amend(T)	2-1-2011
461-110-0630	1-1-2011	Amend	2-1-2011	461-155-0030	4-1-2011	Amend	5-1-2011
461-110-0630	4-1-2011	Amend	5-1-2011	461-155-0030(T)	1-1-2011	Repeal	2-1-2011
461-110-0630(T)	1-1-2011	Repeal	2-1-2011	461-155-0030(T)	4-1-2011	Repeal	5-1-2011
461-110-0750	4-1-2011	Amend	5-1-2011	461-155-0035	1-1-2011	Amend	2-1-2011
461-115-0071	1-1-2011	Amend	2-1-2011	461-155-0035(T)	1-1-2011	Repeal	2-1-2011
461-115-0071(T)	1-1-2011	Repeal	2-1-2011	461-155-0180	1-1-2011	Amend	2-1-2011
461-115-0530	3-1-2011	Amend(T)	4-1-2011	461-155-0180	1-20-2011	Amend(T)	3-1-2011
461-115-0705	4-1-2011	Amend	5-1-2011	461-155-0180(T)	1-1-2011	Repeal	2-1-2011
461-115-0705(T)	4-1-2011	Repeal	5-1-2011	461-155-0225	1-1-2011	Amend	2-1-2011
461-120-0210	1-1-2011	Amend	2-1-2011	461-155-0225(T)	1-1-2011	Repeal	2-1-2011

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461-155-0290	3-1-2011	Amend(T)	4-1-2011	571-004-0020	2-7-2011	Amend	3-1-2011
461-155-0291	3-1-2011	Amend(T)	4-1-2011	571-004-0025	2-7-2011	Amend	3-1-2011
461-155-0295	3-1-2011	Amend(T)	4-1-2011	571-004-0030	2-7-2011	Amend	3-1-2011
461-155-0320	1-1-2011	Amend	2-1-2011	571-004-0035	2-7-2011	Repeal	3-1-2011
461-155-0320(T)	1-1-2011	Repeal	2-1-2011	571-004-0040	2-7-2011	Repeal	3-1-2011
461-155-0528	1-1-2011	Adopt	2-1-2011	571-004-0045	2-7-2011	Amend	3-1-2011
461-155-0528	2-1-2011	Amend(T)	3-1-2011	571-004-0050	2-7-2011	Amend	3-1-2011
461-155-0528(T)	1-1-2011	Repeal	2-1-2011	571-004-0055	2-7-2011	Amend	3-1-2011
461-155-0575	4-1-2011	Adopt(T)	5-1-2011	573-001-0075	12-8-2010	Amend	1-1-2011
461-155-0688	1-1-2011	Amend	2-1-2011	574-050-0005	2-2-2011	Amend	3-1-2011
461-155-0688(T)	1-1-2011	Repeal	2-1-2011	575-080-0100	11-16-2010	Adopt	1-1-2011
461-155-0693	1-1-2011	Amend	2-1-2011	575-080-0110	11-16-2010	Adopt	1-1-2011
461-155-0693	2-1-2011	Amend(T)	3-1-2011	575-080-0120	11-16-2010	Adopt	1-1-2011
461-155-0693(T)	1-1-2011	Repeal	2-1-2011	575-080-0130	11-16-2010	Adopt	1-1-2011
461-160-0015	1-1-2011	Amend(T)	2-1-2011	575-080-0135	11-16-2010	Adopt	1-1-2011
461-160-0015	4-1-2011	Amend	5-1-2011	575-080-0140	11-16-2010	Adopt	1-1-2011
461-160-0015(T)	4-1-2011	Repeal	5-1-2011	575-080-0145	11-16-2010	Adopt	1-1-2011
461-160-0400	4-1-2011	Amend	5-1-2011	580-040-0035	1-20-2011	Amend	3-1-2011
461-160-0400(T)	4-1-2011	Repeal	5-1-2011	581-020-0345	2-1-2011	Amend	3-1-2011
461-160-0410	1-1-2011	Amend	2-1-2011	581-020-0350	12-17-2010	Repeal	2-1-2011
461-160-0430	1-1-2011	Amend	2-1-2011	581-022-0421	2-1-2011	Amend	3-1-2011
461-160-0430	1-1-2011	Amend(T)	2-1-2011	581-022-0617	12-17-2010	Adopt	2-1-2011
461-160-0430	4-1-2011	Amend	5-1-2011	581-045-0009	1-1-2011	Amend	2-1-2011
461-160-0430(T)	1-1-2011	Repeal	2-1-2011	581-051-0305	2-1-2011	Amend	3-1-2011
461-160-0430(T)	4-1-2011	Repeal	5-1-2011	581-051-0306	2-1-2011	Amend	3-1-2011
461-160-0530	1-1-2011	Repeal	2-1-2011	581-053-0002	3-17-2011	Amend	5-1-2011
461-160-0700	1-1-2011	Amend	2-1-2011	581-053-0006	3-17-2011	Amend	5-1-2011
461-160-0700	1-1-2011	Amend(T)	2-1-2011	582-001-0010	3-1-2011	Amend(T)	3-1-2011
461-160-0700	4-1-2011	Amend	5-1-2011	582-030-0040	3-1-2011	Amend(T)	3-1-2011
461-160-0700(T)	1-1-2011	Repeal	2-1-2011	582-050-0000	3-1-2011	Amend(T)	3-1-2011
461-160-0700(T)	4-1-2011	Repeal	5-1-2011	582-050-0005	3-1-2011	Amend(T)	3-1-2011
461-170-0010	4-1-2011	Amend	5-1-2011	582-050-0010	3-1-2011	Amend(T)	3-1-2011
461-170-0010(T)	4-1-2011	Repeal	5-1-2011	582-050-0020	3-1-2011	Amend(T)	3-1-2011
461-170-0011	1-1-2011	Amend	2-1-2011	582-050-0060	3-1-2011	Amend(T)	3-1-2011
461-175-0010	1-1-2011	Amend	2-1-2011	582-060-0010	3-1-2011	Amend(T)	3-1-2011
461-175-0010(T)	1-1-2011	Repeal	2-1-2011	582-060-0020	3-1-2011	Amend(T)	3-1-2011
461-175-0200	1-1-2011	Amend	2-1-2011	582-070-0010	3-1-2011	Amend(T)	3-1-2011
461-175-0200(T)	1-1-2011	Repeal	2-1-2011	582-070-0020	3-1-2011	Amend(T)	3-1-2011
461-175-0250	1-1-2011	Amend	2-1-2011	582-070-0025	3-1-2011	Amend(T)	3-1-2011
461-175-0250(T)	1-1-2011	Repeal	2-1-2011	582-070-0030	3-1-2011	Amend(T)	3-1-2011
461-190-0211	1-1-2011	Amend(T)	2-1-2011	582-070-0040	3-1-2011	Amend(T)	3-1-2011
461-190-0211	4-1-2011	Amend	5-1-2011	582-070-0042	3-1-2011	Amend(T)	3-1-2011
461-190-0211(T)	4-1-2011	Repeal	5-1-2011	582-070-0043	3-1-2011	Amend(T)	3-1-2011
461-190-0416	2-14-2011	Amend(T)	3-1-2011	582-070-0044	3-1-2011	Amend(T)	3-1-2011
461-193-0560	1-1-2011	Amend	2-1-2011	583-030-0010	11-16-2010	Amend	1-1-2011
461-193-0560(T)	1-1-2011	Repeal	2-1-2011	583-030-0035	11-16-2010	Amend	1-1-2011
471-010-0111	12-13-2010	Adopt	1-1-2011	583-050-0011	11-16-2010	Amend	1-1-2011
471-030-0037	3-1-2011	Amend(T)	4-1-2011	583-050-0016	11-16-2010	Amend	1-1-2011
471-030-0038	3-1-2011	Amend(T)	4-1-2011	584-010-0090	1-1-2011	Amend	2-1-2011
471-031-0140	12-13-2010	Amend	1-1-2011	584-017-0200	1-1-2011	Amend	2-1-2011
471-031-0141	12-13-2010	Amend	1-1-2011	584-017-0201	1-1-2011	Amend	2-1-2011
471-031-0200	12-13-2010	Amend	1-1-2011	584-017-0300	1-1-2011	Amend	2-1-2011
471-031-0225	12-13-2010	Repeal	1-1-2011	584-017-0390	1-1-2011	Amend	2-1-2011
471-031-0230	12-13-2010	Repeal	1-1-2011	584-017-0480	1-1-2011	Amend	2-1-2011
471-031-0235	12-13-2010	Adopt	1-1-2011	584-017-0500	1-26-2011	Adopt	3-1-2011

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584-017-0520	1-26-2011	Adopt	3-1-2011	603-011-0256	1-7-2011	Amend	2-1-2011
584-017-0530	1-26-2011	Adopt	3-1-2011	603-011-0263	1-6-2011	Amend	2-1-2011
584-017-0541	1-26-2011	Adopt	3-1-2011	603-011-0264	1-6-2011	Amend	2-1-2011
584-017-0551	1-26-2011	Adopt	3-1-2011	603-011-0281	1-7-2011	Amend	2-1-2011
584-017-0555	1-26-2011	Adopt	3-1-2011	603-011-0340	1-6-2011	Amend	2-1-2011
584-017-0560	1-26-2011	Adopt	3-1-2011	603-011-0365	1-6-2011	Repeal	2-1-2011
584-017-0570	1-26-2011	Adopt	3-1-2011	603-027-0420	1-26-2011	Amend	3-1-2011
584-017-0580	1-26-2011	Adopt	3-1-2011	603-052-0347	11-23-2010	Amend	1-1-2011
584-021-0120	3-15-2011	Amend	4-1-2011	603-052-1207	3-17-2011	Adopt(T)	5-1-2011
584-021-0165	1-1-2011	Amend	1-1-2011	603-052-1212	3-17-2011	Adopt(T)	5-1-2011
584-023-0005	1-1-2011	Amend	1-1-2011	603-052-1215	3-17-2011	Adopt(T)	5-1-2011
584-036-0055	1-1-2011	Amend	1-1-2011	603-052-1230	12-17-2010	Amend	2-1-2011
584-036-0105	3-15-2011	Amend	4-1-2011	603-052-1250	12-17-2010	Amend	2-1-2011
584-042-0002	1-1-2011	Repeal	2-1-2011	617-030-0010	4-5-2011	Amend	5-1-2011
584-042-0006	1-1-2011	Repeal	2-1-2011	629-001-0015	1-7-2011	Amend(T)	2-1-2011
584-042-0009	1-1-2011	Repeal	2-1-2011	629-001-0015	3-15-2011	Amend	4-1-2011
584-042-0044	1-1-2011	Amend	1-1-2011	629-001-0015(T)	3-15-2011	Repeal	4-1-2011
584-048-0065	1-1-2011	Am. & Ren.	2-1-2011	629-001-0020	1-7-2011	Amend(T)	2-1-2011
584-060-0014	3-15-2011	Amend	4-1-2011	629-001-0020	3-15-2011	Amend	4-1-2011
584-060-0062	1-28-2011	Amend	3-1-2011	629-001-0020(T)	3-15-2011	Repeal	4-1-2011
584-060-0162	1-1-2011	Amend	1-1-2011	629-041-0035	1-7-2011	Amend(T)	2-1-2011
584-060-0171	1-1-2011	Amend	1-1-2011	629-041-0035	3-15-2011	Amend	4-1-2011
584-060-0181	1-1-2011	Amend	1-1-2011	629-041-0035(T)	3-15-2011	Repeal	4-1-2011
584-060-0181	3-15-2011	Amend	4-1-2011	635-004-0005	3-22-2011	Amend	5-1-2011
584-060-0182	1-1-2011	Amend	1-1-2011	635-004-0009	3-22-2011	Amend	5-1-2011
584-060-0190	1-1-2011	Amend	1-1-2011	635-004-0017	3-4-2011	Amend(T)	4-1-2011
584-060-0200	1-1-2011	Amend	1-1-2011	635-004-0018	1-1-2011	Amend	1-1-2011
584-060-0210	1-1-2011	Amend	2-1-2011	635-004-0019	12-7-2010	Amend(T)	1-1-2011
584-060-0220	1-1-2011	Amend	2-1-2011	635-004-0019	1-1-2011	Amend	1-1-2011
584-060-0220	3-15-2011	Amend	4-1-2011	635-004-0019	1-1-2011	Amend(T)	2-1-2011
584-065-0125	3-15-2011	Adopt	4-1-2011	635-004-0019	1-11-2011	Amend(T)	2-1-2011
584-070-0001	1-1-2011	Amend	1-1-2011	635-004-0019	3-3-2011	Amend(T)	4-1-2011
584-070-0111	1-1-2011	Amend	1-1-2011	635-004-0019(T)	12-7-2010	Suspend	1-1-2011
584-070-0111	3-15-2011	Amend	4-1-2011	635-004-0019(T)	1-1-2011	Suspend	2-1-2011
584-070-0112	1-1-2011	Amend	1-1-2011	635-004-0019(T)	1-11-2011	Suspend	2-1-2011
584-070-0132	1-1-2011	Amend	1-1-2011	635-004-0019(T)	3-3-2011	Suspend	4-1-2011
584-070-0205	1-1-2011	Adopt	2-1-2011	635-004-0025	1-1-2011	Amend	1-1-2011
584-070-0211	1-1-2011	Amend	2-1-2011	635-004-0035	1-1-2011	Amend	1-1-2011
584-070-0221	1-1-2011	Amend	2-1-2011	635-004-0070	1-1-2011	Amend	1-1-2011
584-070-0271	1-1-2011	Amend	2-1-2011	635-004-0075	1-1-2011	Amend	1-1-2011
584-070-0310	1-1-2011	Amend	1-1-2011	635-005-0045	12-10-2010	Amend(T)	1-1-2011
584-070-0401	1-1-2011	Adopt	2-1-2011	635-005-0055	3-15-2011	Amend(T)	4-1-2011
584-070-0411	1-1-2011	Adopt	2-1-2011	635-005-0190	1-1-2011	Amend	1-1-2011
584-070-0411	4-14-2011	Amend	5-1-2011	635-006-0215	1-1-2011	Amend	1-1-2011
584-070-0421	1-1-2011	Adopt	2-1-2011	635-006-0232	1-10-2011	Amend	2-1-2011
584-070-0421	4-14-2011	Amend	5-1-2011	635-006-1075	11-23-2010	Amend(T)	1-1-2011
584-070-0431	1-1-2011	Adopt	2-1-2011	635-006-1095	12-15-2010	Amend(T)	1-1-2011
584-070-0431	4-14-2011	Amend	5-1-2011	635-007-0545	12-6-2010	Amend	1-1-2011
584-080-0031	1-1-2011	Amend	1-1-2011	635-007-0825	12-6-2010	Repeal	1-1-2011
584-080-0151	3-15-2011	Amend	4-1-2011	635-007-0830	12-6-2010	Repeal	1-1-2011
584-080-0152	3-15-2011	Amend	4-1-2011	635-008-0055	1-1-2011	Amend	2-1-2011
584-080-0153	1-1-2011	Amend	1-1-2011	635-008-0148	1-14-2011	Amend	2-1-2011
584-080-0161	1-1-2011	Amend	1-1-2011	635-008-0149	1-14-2011	Amend	2-1-2011
584-080-0171	1-1-2011	Amend	1-1-2011	635-008-0151	1-14-2011	Amend	2-1-2011
603-011-0250	1-7-2011	Amend	2-1-2011	635-008-0153	1-1-2011	Amend	2-1-2011

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635-010-0157	1-1-2011	Amend	2-1-2011	635-041-0065(T)	2-10-2011	Suspend	3-1-2011
635-011-0100	1-1-2011	Amend	2-1-2011	635-042-0010	3-21-2011	Amend	5-1-2011
635-013-0003	1-1-2011	Amend	2-1-2011	635-042-0022	3-29-2011	Amend(T)	5-1-2011
635-013-0004	1-1-2011	Amend	2-1-2011	635-042-0022	4-6-2011	Amend(T)	5-1-2011
635-014-0080	1-1-2011	Amend	2-1-2011	635-042-0032	3-21-2011	Amend	5-1-2011
635-014-0090	1-1-2011	Amend	2-1-2011	635-042-0060	3-21-2011	Amend	5-1-2011
635-016-0080	1-1-2011	Amend	2-1-2011	635-042-0130	12-1-2010	Amend(T)	1-1-2011
635-016-0090	1-1-2011	Amend	2-1-2011	635-042-0130	3-21-2011	Amend	5-1-2011
635-017-0080	1-1-2011	Amend	2-1-2011	635-042-0135	1-15-2011	Amend(T)	2-1-2011
635-017-0090	1-1-2011	Amend	2-1-2011	635-042-0145	2-13-2011	Amend(T)	3-1-2011
635-017-0095	1-1-2011	Amend	2-1-2011	635-042-0145	3-21-2011	Amend	5-1-2011
635-017-0095	1-1-2011	Amend(T)	2-1-2011	635-042-0160	2-13-2011	Amend(T)	3-1-2011
635-017-0095	2-17-2011	Amend(T)	3-1-2011	635-042-0160	3-21-2011	Amend	5-1-2011
635-017-0095	3-17-2011	Amend(T)	5-1-2011	635-042-0170	2-13-2011	Amend(T)	3-1-2011
635-017-0095	3-21-2011	Amend	5-1-2011	635-042-0170	3-21-2011	Amend	5-1-2011
635-017-0095(T)	2-17-2011	Suspend	3-1-2011	635-042-0180	2-13-2011	Amend(T)	3-1-2011
635-017-0095(T)	3-17-2011	Suspend	5-1-2011	635-042-0180	3-21-2011	Amend	5-1-2011
635-018-0080	1-1-2011	Amend	2-1-2011	635-043-0100	1-28-2011	Amend(T)	3-1-2011
635-018-0090	1-1-2011	Amend	2-1-2011	635-044-0000	2-15-2011	Amend	3-1-2011
635-018-0090	1-1-2011	Amend(T)	2-1-2011	635-044-0060	2-15-2011	Amend	3-1-2011
635-018-0090	4-15-2011	Amend(T)	4-1-2011	635-045-0002	1-1-2011	Amend	2-1-2011
635-018-0090	4-15-2011	Amend(T)	4-1-2011	635-049-0025	1-1-2011	Amend(T)	2-1-2011
635-018-0090(T)	4-15-2011	Suspend	4-1-2011	635-049-0265	1-1-2011	Amend(T)	2-1-2011
635-018-0090(T)	4-15-2011	Suspend	4-1-2011	635-051-0048	1-19-2011	Amend(T)	3-1-2011
635-019-0080	1-1-2011	Amend	2-1-2011	635-051-0076	1-28-2011	Adopt(T)	3-1-2011
635-019-0090	1-1-2011	Amend	2-1-2011	635-051-0078	1-28-2011	Adopt(T)	3-1-2011
635-021-0080	1-1-2011	Amend	2-1-2011	635-055-0000	1-14-2011	Amend	2-1-2011
635-021-0090	1-1-2011	Amend	2-1-2011	635-055-0030	1-14-2011	Amend	2-1-2011
635-023-0080	1-1-2011	Amend	2-1-2011	635-055-0035	1-14-2011	Amend	2-1-2011
635-023-0090	1-1-2011	Amend	2-1-2011	635-055-0037	1-14-2011	Amend	2-1-2011
635-023-0095	1-1-2011	Amend	2-1-2011	635-056-0000	2-15-2011	Amend	3-1-2011
635-023-0095	1-1-2011	Amend(T)	2-1-2011	635-056-0010	2-15-2011	Amend	3-1-2011
635-023-0095	2-11-2011	Amend(T)	3-1-2011	635-056-0020	2-15-2011	Amend	3-1-2011
635-023-0095	3-21-2011	Amend	5-1-2011	635-056-0050	2-15-2011	Amend	3-1-2011
635-023-0095	4-10-2011	Amend(T)	5-1-2011	635-056-0060	2-15-2011	Amend	3-1-2011
635-023-0095(T)	2-11-2011	Suspend	3-1-2011	635-056-0070	2-15-2011	Amend	3-1-2011
635-023-0095(T)	4-10-2011	Suspend	5-1-2011	635-056-0075	2-15-2011	Amend	3-1-2011
635-023-0125	1-1-2011	Amend	2-1-2011	635-056-0080	2-15-2011	Amend	3-1-2011
635-023-0125	2-14-2011	Amend(T)	3-1-2011	635-056-0130	2-15-2011	Amend	3-1-2011
635-023-0125	4-8-2011	Amend(T)	5-1-2011	635-057-0000	2-15-2011	Amend	3-1-2011
635-023-0125	4-16-2011	Amend(T)	5-1-2011	635-060-0023	1-1-2011	Amend	2-1-2011
635-023-0125(T)	4-8-2011	Suspend	5-1-2011	635-060-0030	1-1-2011	Amend	2-1-2011
635-023-0125(T)	4-16-2011	Suspend	5-1-2011	635-060-0055	1-1-2011	Amend	2-1-2011
635-023-0128	1-1-2011	Amend	2-1-2011	635-065-0001	1-1-2011	Amend	2-1-2011
635-023-0130	1-1-2011	Amend	2-1-2011	635-065-0015	1-1-2011	Amend	2-1-2011
635-023-0134	1-1-2011	Amend	2-1-2011	635-065-0090	1-1-2011	Amend	2-1-2011
635-023-0134	4-23-2011	Amend(T)	5-1-2011	635-065-0401	1-1-2011	Amend	2-1-2011
635-039-0080	1-1-2011	Amend	1-1-2011	635-065-0625	1-1-2011	Amend	2-1-2011
635-039-0080	3-22-2011	Amend	5-1-2011	635-065-0700	1-1-2011	Amend	2-1-2011
635-039-0085	3-22-2011	Amend	5-1-2011	635-065-0705	1-1-2011	Amend	2-1-2011
635-039-0090	1-1-2011	Amend	1-1-2011	635-065-0740	1-1-2011	Amend	2-1-2011
635-039-0090	3-22-2011	Amend	5-1-2011	635-065-0760	1-1-2011	Amend	2-1-2011
635-041-0045	3-21-2011	Amend	5-1-2011	635-066-0000	1-1-2011	Amend	2-1-2011
635-041-0065	2-1-2011	Amend(T)	3-1-2011	635-067-0000	1-1-2011	Amend	2-1-2011
635-041-0065	2-10-2011	Amend(T)	3-1-2011	635-068-0000	3-1-2011	Amend	3-1-2011
635-041-0065	3-21-2011	Amend	5-1-2011	635-069-0000	2-1-2011	Amend	3-1-2011

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635-073-0000	2-1-2011	Amend	3-1-2011	660-006-0004	2-2-2011	Amend	3-1-2011
635-073-0065	2-1-2011	Amend	3-1-2011	660-006-0005	2-2-2011	Amend	3-1-2011
635-073-0070	2-1-2011	Amend	3-1-2011	660-006-0010	2-2-2011	Amend	3-1-2011
635-073-0076	1-1-2011	Amend	2-1-2011	660-006-0015	2-2-2011	Amend	3-1-2011
635-075-0001	1-1-2011	Amend	2-1-2011	660-006-0020	2-2-2011	Amend	3-1-2011
635-075-0010	1-1-2011	Amend	2-1-2011	660-006-0025	2-2-2011	Amend	3-1-2011
635-080-0016	1-1-2011	Amend	2-1-2011	660-006-0026	2-2-2011	Amend	3-1-2011
635-080-0021	1-1-2011	Amend	2-1-2011	660-006-0027	2-2-2011	Amend	3-1-2011
635-080-0023	1-1-2011	Amend	2-1-2011	660-006-0029	2-2-2011	Amend	3-1-2011
635-080-0026	1-1-2011	Amend	2-1-2011	660-006-0031	2-2-2011	Amend	3-1-2011
635-170-0015	12-29-2010	Amend(T)	2-1-2011	660-006-0035	2-2-2011	Amend	3-1-2011
635-200-0030	3-2-2011	ReNUMBER	4-1-2011	660-006-0040	2-2-2011	Amend	3-1-2011
644-010-0010	1-1-2011	Amend(T)	1-1-2011	660-006-0050	2-2-2011	Amend	3-1-2011
644-010-0010	2-14-2011	Amend	3-1-2011	660-006-0055	2-2-2011	Amend	3-1-2011
644-010-0010(T)	2-14-2011	Repeal	3-1-2011	660-006-0057	2-2-2011	Amend	3-1-2011
660-001-0000	12-8-2010	Amend	1-1-2011	660-006-0060	2-2-2011	Amend	3-1-2011
660-001-0005	12-8-2010	Amend	1-1-2011	660-033-0010	3-16-2011	Amend	5-1-2011
660-001-0007	12-8-2010	Amend	1-1-2011	660-033-0020	3-16-2011	Amend	5-1-2011
660-001-0201	12-8-2010	Amend	1-1-2011	660-033-0030	3-16-2011	Amend	5-1-2011
660-001-0210	12-8-2010	Amend	1-1-2011	660-033-0120	3-16-2011	Amend	5-1-2011
660-001-0220	12-8-2010	Amend	1-1-2011	660-033-0130	11-23-2010	Amend	1-1-2011
660-001-0230	12-8-2010	Amend	1-1-2011	660-033-0130	3-16-2011	Amend	5-1-2011
660-003-0005	12-8-2010	Amend	1-1-2011	660-033-0130(T)	11-23-2010	Repeal	1-1-2011
660-003-0010	12-8-2010	Amend	1-1-2011	660-033-0135	3-16-2011	Amend	5-1-2011
660-003-0015	12-8-2010	Amend	1-1-2011	660-033-0140	3-16-2011	Amend	5-1-2011
660-003-0020	12-8-2010	Amend	1-1-2011	660-033-0145	3-16-2011	Amend	5-1-2011
660-003-0025	12-8-2010	Amend	1-1-2011	678-030-0027	11-19-2010	Amend	1-1-2011
660-003-0032	12-8-2010	Amend	1-1-2011	690-095-0005	12-14-2010	Adopt	1-1-2011
660-003-0033	12-8-2010	Amend	1-1-2011	690-095-0010	12-14-2010	Adopt	1-1-2011
660-003-0050	12-8-2010	Amend	1-1-2011	690-095-0015	12-14-2010	Adopt	1-1-2011
660-004-0000	2-2-2011	Amend	3-1-2011	690-095-0020	12-14-2010	Adopt	1-1-2011
660-004-0000	3-16-2011	Amend	5-1-2011	690-095-0025	12-14-2010	Adopt	1-1-2011
660-004-0005	2-2-2011	Amend	3-1-2011	690-095-0030	12-14-2010	Adopt	1-1-2011
660-004-0005	3-16-2011	Amend	5-1-2011	690-095-0035	12-14-2010	Adopt	1-1-2011
660-004-0010	2-2-2011	Amend	3-1-2011	690-095-0040	12-14-2010	Adopt	1-1-2011
660-004-0010	3-16-2011	Amend	5-1-2011	690-095-0045	12-14-2010	Adopt	1-1-2011
660-004-0015	2-2-2011	Amend	3-1-2011	690-095-0050	12-14-2010	Adopt	1-1-2011
660-004-0015	3-16-2011	Amend	5-1-2011	690-095-0055	12-14-2010	Adopt	1-1-2011
660-004-0018	2-2-2011	Amend	3-1-2011	690-095-0060	12-14-2010	Adopt	1-1-2011
660-004-0018	3-16-2011	Amend	5-1-2011	690-095-0065	12-14-2010	Adopt	1-1-2011
660-004-0020	2-2-2011	Amend	3-1-2011	690-095-0070	12-14-2010	Adopt	1-1-2011
660-004-0020	3-16-2011	Amend	5-1-2011	690-095-0075	12-14-2010	Adopt	1-1-2011
660-004-0022	2-2-2011	Amend	3-1-2011	690-095-0080	12-14-2010	Adopt	1-1-2011
660-004-0022	3-16-2011	Amend	5-1-2011	690-095-0085	12-14-2010	Adopt	1-1-2011
660-004-0025	2-2-2011	Amend	3-1-2011	690-095-0090	12-14-2010	Adopt	1-1-2011
660-004-0025	3-16-2011	Amend	5-1-2011	690-095-0095	12-14-2010	Adopt	1-1-2011
660-004-0028	2-2-2011	Amend	3-1-2011	690-095-0100	12-14-2010	Adopt	1-1-2011
660-004-0028	3-16-2011	Amend	5-1-2011	731-017-0005	12-22-2010	Adopt	2-1-2011
660-004-0030	2-2-2011	Amend	3-1-2011	731-017-0010	12-22-2010	Adopt	2-1-2011
660-004-0030	3-16-2011	Amend	5-1-2011	731-017-0015	12-22-2010	Adopt	2-1-2011
660-004-0035	2-2-2011	Amend	3-1-2011	731-017-0020	12-22-2010	Adopt	2-1-2011
660-004-0035	3-16-2011	Amend	5-1-2011	731-017-0025	12-22-2010	Adopt	2-1-2011
660-004-0040	2-2-2011	Amend	3-1-2011	731-017-0030	12-22-2010	Adopt	2-1-2011
660-004-0040	3-16-2011	Amend	5-1-2011	731-017-0035	12-22-2010	Adopt	2-1-2011
660-006-0000	2-2-2011	Amend	3-1-2011	731-017-0040	12-22-2010	Adopt	2-1-2011

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731-017-0045	12-22-2010	Adopt	2-1-2011	735-176-0010	1-1-2011	Amend	1-1-2011
731-017-0050	12-22-2010	Adopt	2-1-2011	735-176-0017	1-1-2011	Amend	1-1-2011
731-017-0055	12-22-2010	Adopt	2-1-2011	735-176-0019	1-1-2011	Amend	1-1-2011
731-035-0070	12-22-2010	Amend	2-1-2011	735-176-0020	1-1-2011	Amend	1-1-2011
734-051-0020	1-19-2011	Amend	3-1-2011	735-176-0021	1-1-2011	Amend	1-1-2011
734-051-0020(T)	1-19-2011	Repeal	3-1-2011	735-176-0022	1-1-2011	Amend	1-1-2011
734-051-0040	1-19-2011	Amend	3-1-2011	735-176-0023	1-1-2011	Adopt	1-1-2011
734-051-0040(T)	1-19-2011	Repeal	3-1-2011	735-176-0030	1-1-2011	Amend	1-1-2011
734-051-0045	1-19-2011	Amend	3-1-2011	735-176-0040	1-1-2011	Amend	1-1-2011
734-051-0045(T)	1-19-2011	Repeal	3-1-2011	735-176-0045	1-1-2011	Amend	1-1-2011
734-051-0070	1-19-2011	Amend	3-1-2011	736-010-0015	3-24-2011	Amend(T)	5-1-2011
734-051-0070(T)	1-19-2011	Repeal	3-1-2011	736-010-0025	3-24-2011	Amend(T)	5-1-2011
734-051-0080	1-19-2011	Amend	3-1-2011	736-010-0026	3-24-2011	Amend(T)	5-1-2011
734-051-0080(T)	1-19-2011	Repeal	3-1-2011	736-010-0030	3-24-2011	Amend(T)	5-1-2011
734-051-0135	1-19-2011	Amend	3-1-2011	736-010-0066	2-15-2011	Adopt	3-1-2011
734-051-0135(T)	1-19-2011	Repeal	3-1-2011	736-019-0000	3-30-2011	Amend	5-1-2011
734-051-0245	1-19-2011	Amend	3-1-2011	736-019-0020	3-30-2011	Amend	5-1-2011
734-051-0245(T)	1-19-2011	Repeal	3-1-2011	736-019-0040	3-30-2011	Amend	5-1-2011
734-051-0255	1-19-2011	Amend	3-1-2011	736-019-0060	3-30-2011	Amend	5-1-2011
734-051-0255(T)	1-19-2011	Repeal	3-1-2011	736-019-0070	3-30-2011	Adopt	5-1-2011
734-051-0295	1-19-2011	Amend	3-1-2011	736-019-0080	3-30-2011	Amend	5-1-2011
734-051-0295(T)	1-19-2011	Repeal	3-1-2011	736-019-0100	3-30-2011	Amend	5-1-2011
734-051-0315	1-19-2011	Amend	3-1-2011	736-019-0120	3-30-2011	Amend	5-1-2011
734-051-0315(T)	1-19-2011	Repeal	3-1-2011	737-010-0020	1-28-2011	Amend	3-1-2011
734-051-0345	1-19-2011	Amend	3-1-2011	737-100-0010	2-18-2011	Adopt	4-1-2011
734-051-0345(T)	1-19-2011	Repeal	3-1-2011	737-100-0040	2-18-2011	Adopt	4-1-2011
734-051-0500	1-19-2011	Amend	3-1-2011	740-200-0010	2-18-2011	Amend	4-1-2011
734-051-0500(T)	1-19-2011	Repeal	3-1-2011	740-200-0020	2-18-2011	Amend	4-1-2011
734-051-0530	1-19-2011	Amend	3-1-2011	740-200-0040	2-18-2011	Amend	4-1-2011
734-051-0530(T)	1-19-2011	Repeal	3-1-2011	741-125-0010	12-22-2010	Repeal	2-1-2011
734-070-0017	1-28-2011	Adopt	3-1-2011	800-010-0015	2-1-2011	Amend	3-1-2011
735-032-0065	12-22-2010	Adopt	2-1-2011	800-010-0030	2-1-2011	Amend	3-1-2011
735-034-0000	3-16-2011	Amend	5-1-2011	800-010-0040	2-1-2011	Amend	3-1-2011
735-034-0005	3-16-2011	Amend	5-1-2011	800-010-0041	2-1-2011	Amend	3-1-2011
735-034-0010	3-16-2011	Amend	5-1-2011	800-010-0050	2-1-2011	Amend	3-1-2011
735-040-0098	1-28-2011	Amend	3-1-2011	800-015-0010	2-1-2011	Amend	3-1-2011
735-040-0098(T)	1-28-2011	Repeal	3-1-2011	800-015-0015	2-1-2011	Amend	3-1-2011
735-046-0050	1-1-2011	Amend	2-1-2011	800-015-0030	2-1-2011	Amend	3-1-2011
735-060-0000	1-1-2011	Amend	1-1-2011	800-020-0015	2-1-2011	Amend	3-1-2011
735-060-0120	1-1-2011	Amend	1-1-2011	800-020-0020	7-1-2011	Amend	3-1-2011
735-062-0002	1-1-2011	Amend	1-1-2011	800-020-0025	2-1-2011	Amend	3-1-2011
735-062-0070	1-1-2011	Amend	1-1-2011	800-020-0025	7-1-2011	Amend	3-1-2011
735-062-0200	1-1-2011	Amend	1-1-2011	800-020-0026	2-1-2011	Amend	3-1-2011
735-072-0020	3-2-2011	Amend	4-1-2011	800-025-0020	2-1-2011	Amend	3-1-2011
735-072-0050	3-2-2011	Amend	4-1-2011	800-025-0023	2-1-2011	Amend	3-1-2011
735-080-0020	3-16-2011	Amend	5-1-2011	800-025-0025	2-1-2011	Amend	3-1-2011
735-080-0040	3-16-2011	Amend	5-1-2011	800-025-0027	2-1-2011	Amend	3-1-2011
735-080-0046	3-16-2011	Adopt	5-1-2011	800-025-0030	2-1-2011	Amend	3-1-2011
735-090-0000	1-1-2011	Amend	2-1-2011	800-025-0050	2-1-2011	Amend	3-1-2011
735-090-0020	1-1-2011	Amend	2-1-2011	800-025-0060	2-1-2011	Amend	3-1-2011
735-090-0042	1-1-2011	Adopt	2-1-2011	800-030-0025	2-1-2011	Amend	3-1-2011
735-090-0101	1-1-2011	Amend	2-1-2011	800-030-0030	2-1-2011	Adopt	3-1-2011
735-100-0030	2-18-2011	Am. & Ren.	4-1-2011	800-030-0050	2-1-2011	Amend	3-1-2011
735-150-0055	1-1-2011	Amend	2-1-2011	801-001-0035	1-1-2011	Amend	1-1-2011
735-154-0005	3-16-2011	Amend	5-1-2011	801-005-0010	1-1-2011	Amend	1-1-2011
735-176-0000	1-1-2011	Amend	1-1-2011	801-010-0010	1-1-2011	Amend	1-1-2011

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801-010-0060	1-1-2011	Amend	1-1-2011	813-008-0020	3-1-2011	Suspend	4-1-2011
801-010-0065	1-1-2011	Amend	1-1-2011	813-008-0025	3-1-2011	Suspend	4-1-2011
801-010-0073	1-1-2011	Amend	1-1-2011	813-008-0030	3-1-2011	Suspend	4-1-2011
801-010-0075	1-1-2011	Amend	1-1-2011	813-008-0040	3-1-2011	Suspend	4-1-2011
801-010-0078	1-1-2011	Amend	1-1-2011	813-041-0020	12-15-2010	Amend	1-1-2011
801-010-0079	1-1-2011	Amend	1-1-2011	813-042-0030	2-17-2011	Amend	4-1-2011
801-010-0080	1-1-2011	Amend	1-1-2011	813-043-0030	2-17-2011	Amend	4-1-2011
801-010-0100	1-1-2011	Amend	1-1-2011	813-065-0120	3-1-2011	Adopt(T)	4-1-2011
801-010-0110	1-1-2011	Amend	1-1-2011	813-065-0130	3-1-2011	Adopt(T)	4-1-2011
801-010-0115	1-1-2011	Amend	1-1-2011	813-065-0140	3-1-2011	Adopt(T)	4-1-2011
801-010-0120	1-1-2011	Amend	1-1-2011	813-065-0150	3-1-2011	Adopt(T)	4-1-2011
801-010-0125	1-1-2011	Amend	1-1-2011	813-065-0200	3-1-2011	Adopt(T)	4-1-2011
801-010-0130	1-1-2011	Amend	1-1-2011	813-065-0210	3-1-2011	Adopt(T)	4-1-2011
801-010-0170	1-1-2011	Amend	1-1-2011	813-065-0220	3-1-2011	Adopt(T)	4-1-2011
801-010-0190	1-1-2011	Amend	1-1-2011	813-065-0230	3-1-2011	Adopt(T)	4-1-2011
801-010-0340	1-1-2011	Amend	1-1-2011	813-065-0240	3-1-2011	Adopt(T)	4-1-2011
801-010-0345	1-1-2011	Amend	1-1-2011	813-230-0000	2-7-2011	Amend	3-1-2011
801-040-0010	1-1-2011	Amend	1-1-2011	813-230-0000(T)	2-7-2011	Repeal	3-1-2011
801-040-0050	1-1-2011	Amend	1-1-2011	813-230-0005	2-7-2011	Amend	3-1-2011
806-010-0105	12-14-2010	Amend	1-1-2011	813-230-0005(T)	2-7-2011	Repeal	3-1-2011
808-002-0020	1-28-2011	Amend(T)	3-1-2011	813-230-0007	2-7-2011	Adopt	3-1-2011
808-003-0130	1-27-2011	Amend	3-1-2011	813-230-0007(T)	2-7-2011	Repeal	3-1-2011
812-001-0200	12-1-2010	Amend(T)	1-1-2011	813-230-0015	2-7-2011	Amend	3-1-2011
812-001-0200	3-1-2011	Amend	4-1-2011	813-230-0015(T)	2-7-2011	Repeal	3-1-2011
812-001-0200(T)	3-1-2011	Repeal	4-1-2011	817-030-0005	3-1-2011	Amend(T)	4-1-2011
812-001-0290	3-1-2011	Amend	4-1-2011	817-030-0015	3-1-2011	Amend(T)	4-1-2011
812-002-0320	1-1-2011	Amend	2-1-2011	817-030-0018	3-1-2011	Amend(T)	4-1-2011
812-002-0677	1-1-2011	Adopt	2-1-2011	817-035-0050	3-1-2011	Amend(T)	4-1-2011
812-005-0800	3-1-2011	Amend	4-1-2011	817-040-0003	3-1-2011	Amend(T)	4-1-2011
812-006-0150	3-1-2011	Amend	4-1-2011	818-013-0001	2-1-2011	Amend	2-1-2011
812-006-0250	3-1-2011	Amend	4-1-2011	818-013-0001(T)	2-1-2011	Repeal	2-1-2011
812-007-0323	12-22-2010	Adopt(T)	2-1-2011	818-013-0005	2-1-2011	Amend	2-1-2011
812-007-0323	3-1-2011	Adopt	4-1-2011	818-013-0005(T)	2-1-2011	Repeal	2-1-2011
812-007-0323(T)	3-1-2011	Repeal	4-1-2011	818-013-0010	2-1-2011	Amend	2-1-2011
812-008-0070	3-1-2011	Amend	4-1-2011	818-013-0010(T)	2-1-2011	Repeal	2-1-2011
812-008-0072	3-1-2011	Amend	4-1-2011	818-013-0015	2-1-2011	Amend	2-1-2011
812-008-0074	1-1-2011	Amend	2-1-2011	818-013-0015(T)	2-1-2011	Repeal	2-1-2011
812-008-0074	3-1-2011	Amend	4-1-2011	818-013-0020	2-1-2011	Amend	2-1-2011
812-020-0090	1-1-2011	Amend	2-1-2011	818-013-0020(T)	2-1-2011	Repeal	2-1-2011
812-025-0000	1-1-2011	Adopt	2-1-2011	818-013-0025	2-1-2011	Amend	2-1-2011
812-025-0005	1-1-2011	Adopt	2-1-2011	818-013-0025(T)	2-1-2011	Repeal	2-1-2011
812-025-0010	1-1-2011	Adopt	2-1-2011	818-013-0030	2-1-2011	Amend	2-1-2011
812-025-0015	1-1-2011	Adopt	2-1-2011	818-013-0030(T)	2-1-2011	Repeal	2-1-2011
812-025-0020	1-1-2011	Adopt	2-1-2011	818-013-0035	2-1-2011	Amend	2-1-2011
812-025-0025	1-1-2011	Adopt	2-1-2011	818-013-0035(T)	2-1-2011	Repeal	2-1-2011
812-025-0030	1-1-2011	Adopt	2-1-2011	820-010-0209	1-14-2011	Amend	2-1-2011
812-025-0035	1-1-2011	Adopt	2-1-2011	820-010-0210	1-14-2011	Amend	2-1-2011
812-025-0040	1-1-2011	Adopt	2-1-2011	820-010-0212	1-14-2011	Amend	2-1-2011
812-025-0045	1-1-2011	Adopt	2-1-2011	820-010-0213	1-14-2011	Amend	2-1-2011
813-001-0060	12-1-2010	Adopt(T)	1-1-2011	820-010-0214	1-14-2011	Amend	2-1-2011
813-007-0055	3-21-2011	Repeal	5-1-2011	820-010-0215	12-28-2010	Amend(T)	2-1-2011
813-007-0057	3-21-2011	Adopt	5-1-2011	820-010-0215	1-14-2011	Amend	2-1-2011
813-007-0060	3-21-2011	Repeal	5-1-2011	820-010-0215(T)	1-14-2011	Repeal	2-1-2011
813-008-0005	3-1-2011	Am. & Ren.(T)	4-1-2011	820-010-0305	1-14-2011	Amend	2-1-2011
813-008-0010	3-1-2011	Suspend	4-1-2011	820-010-0400	1-14-2011	Amend	2-1-2011

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820-010-0427	1-14-2011	Amend	2-1-2011	836-080-0170	2-4-2011	Adopt	3-1-2011
820-010-0435	1-14-2011	Repeal	2-1-2011	836-080-0172	2-4-2011	Adopt	3-1-2011
820-010-0463	1-14-2011	Amend	2-1-2011	836-080-0175	2-4-2011	Adopt	3-1-2011
820-010-0505	1-14-2011	Amend	2-1-2011	836-080-0178	2-4-2011	Adopt	3-1-2011
820-010-0520	1-14-2011	Amend	2-1-2011	836-080-0180	2-4-2011	Adopt	3-1-2011
833-020-0011	2-1-2011	Amend	2-1-2011	836-080-0183	2-4-2011	Adopt	3-1-2011
833-020-0051	2-1-2011	Amend	2-1-2011	836-080-0185	2-4-2011	Adopt	3-1-2011
833-020-0081	1-1-2011	Amend	1-1-2011	836-080-0188	2-4-2011	Adopt	3-1-2011
833-040-0021	1-1-2011	Amend	1-1-2011	836-080-0193	2-4-2011	Adopt	3-1-2011
833-050-0081	1-1-2011	Amend	1-1-2011	836-080-0800	3-1-2011	Adopt	2-1-2011
833-055-0001	1-1-2011	Repeal	1-1-2011	836-080-0805	3-1-2011	Adopt	2-1-2011
833-055-0010	1-1-2011	Repeal	1-1-2011	836-080-0810	3-1-2011	Adopt	2-1-2011
833-055-0020	1-1-2011	Repeal	1-1-2011	836-100-0010	2-10-2011	Adopt	3-1-2011
833-060-0012	1-1-2011	Amend	1-1-2011	836-100-0010(T)	2-10-2011	Repeal	3-1-2011
833-060-0062	1-1-2011	Adopt	1-1-2011	836-100-0015	2-10-2011	Adopt	3-1-2011
833-100-0021	1-1-2011	Amend	1-1-2011	836-100-0015(T)	2-10-2011	Repeal	3-1-2011
833-110-0021	1-1-2011	Amend	1-1-2011	837-012-0315	1-1-2011	Amend(T)	2-1-2011
833-130-0080	1-1-2011	Adopt	1-1-2011	837-012-0330	1-1-2011	Amend(T)	2-1-2011
836-009-0007	1-1-2011	Amend	2-1-2011	837-012-0510	5-2-2011	Amend	4-1-2011
836-011-0000	1-1-2011	Amend	2-1-2011	837-012-0515	5-2-2011	Amend	4-1-2011
836-011-0250	2-4-2011	Adopt	3-1-2011	837-012-0520	5-2-2011	Amend	4-1-2011
836-011-0253	2-4-2011	Adopt	3-1-2011	837-012-0525	5-2-2011	Amend	4-1-2011
836-011-0255	2-4-2011	Adopt	3-1-2011	837-012-0535	5-2-2011	Amend	4-1-2011
836-011-0258	2-4-2011	Adopt	3-1-2011	837-012-0540	5-2-2011	Amend	4-1-2011
836-011-0260	2-4-2011	Adopt	3-1-2011	837-012-0550	5-2-2011	Amend	4-1-2011
836-011-0515	12-15-2010	Amend	1-1-2011	837-012-0555	5-2-2011	Amend	4-1-2011
836-031-0600	2-23-2011	Amend	4-1-2011	837-012-0560	5-2-2011	Amend	4-1-2011
836-031-0620	2-23-2011	Amend	4-1-2011	837-012-0565	5-2-2011	Amend	4-1-2011
836-031-0630	2-23-2011	Amend	4-1-2011	837-040-0020	4-1-2011	Amend	4-1-2011
836-031-0640	2-23-2011	Amend	4-1-2011	837-041-0050	12-1-2010	Amend	1-1-2011
836-031-0650	2-23-2011	Repeal	4-1-2011	837-047-0100	12-28-2010	Adopt	1-1-2011
836-031-0660	2-23-2011	Repeal	4-1-2011	837-047-0110	12-28-2010	Adopt	1-1-2011
836-031-0670	2-23-2011	Amend	4-1-2011	837-047-0120	12-28-2010	Adopt	1-1-2011
836-031-0680	2-23-2011	Amend	4-1-2011	837-047-0130	12-28-2010	Adopt	1-1-2011
836-031-0690	2-23-2011	Amend	4-1-2011	837-047-0135	12-28-2010	Adopt	1-1-2011
836-051-0030	2-23-2011	Adopt	4-1-2011	837-047-0140	12-28-2010	Adopt	1-1-2011
836-051-0032	2-23-2011	Adopt	4-1-2011	837-047-0150	12-28-2010	Adopt	1-1-2011
836-051-0034	2-23-2011	Adopt	4-1-2011	837-047-0160	12-28-2010	Adopt	1-1-2011
836-051-0036	2-23-2011	Adopt	4-1-2011	837-047-0170	12-28-2010	Adopt	1-1-2011
836-051-0038	2-23-2011	Adopt	4-1-2011	839-001-0200	1-1-2011	Amend	2-1-2011
836-051-0040	2-23-2011	Adopt	4-1-2011	839-020-0027	1-1-2011	Amend	2-1-2011
836-052-0114	2-23-2011	Amend	4-1-2011	839-025-0004	1-1-2011	Amend	2-1-2011
836-052-0145	2-23-2011	Amend	4-1-2011	839-025-0013	1-1-2011	Amend	2-1-2011
836-052-0151	2-23-2011	Amend	4-1-2011	839-025-0020	1-1-2011	Amend	2-1-2011
836-052-0160	2-23-2011	Amend	4-1-2011	839-025-0035	1-1-2011	Amend	2-1-2011
836-052-0636	2-10-2011	Amend	3-1-2011	839-025-0060	1-1-2011	Amend	2-1-2011
836-052-0756	2-10-2011	Amend	3-1-2011	839-025-0100	1-1-2011	Amend	2-1-2011
836-052-0776	2-10-2011	Amend	3-1-2011	839-025-0230	1-1-2011	Amend	2-1-2011
836-052-0790	2-10-2011	Adopt	3-1-2011	839-025-0700	1-1-2011	Amend	2-1-2011
836-052-1000	2-23-2011	Amend	4-1-2011	839-025-0700	4-1-2011	Amend	5-1-2011
836-053-0510	2-23-2011	Amend	4-1-2011	839-050-0440	2-1-2011	Amend	3-1-2011
836-071-0110	1-1-2011	Amend	2-1-2011	839-050-0445	2-1-2011	Amend	3-1-2011
836-071-0118	1-1-2011	Adopt	2-1-2011	845-003-0670	1-1-2011	Amend	2-1-2011
836-071-0120	1-1-2011	Amend	2-1-2011	845-005-0311	3-1-2011	Amend	4-1-2011
836-080-0090	2-4-2011	Amend	3-1-2011	845-005-0331	3-1-2011	Amend	4-1-2011

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845-005-0440	1-1-2011	Amend	2-1-2011	851-070-0070(T)	12-2-2010	Repeal	1-1-2011
845-006-0345	1-1-2011	Amend	2-1-2011	851-070-0080	12-2-2010	Adopt	1-1-2011
845-006-0480	3-1-2011	Amend	4-1-2011	851-070-0080(T)	12-2-2010	Repeal	1-1-2011
845-008-0050	1-1-2011	Adopt	2-1-2011	851-070-0090	12-2-2010	Adopt	1-1-2011
845-008-0070	1-1-2011	Adopt	2-1-2011	851-070-0090(T)	12-2-2010	Repeal	1-1-2011
845-008-0080	1-1-2011	Adopt	2-1-2011	851-070-0100	12-2-2010	Adopt	1-1-2011
845-008-0090	1-1-2011	Adopt	2-1-2011	851-070-0100(T)	12-2-2010	Repeal	1-1-2011
845-009-0010	1-1-2011	Amend	2-1-2011	855-010-0050	2-8-2011	Adopt(T)	3-1-2011
845-010-0146	11-20-2010	Adopt(T)	1-1-2011	855-010-0055	2-8-2011	Adopt(T)	3-1-2011
845-010-0154	1-1-2011	Am. & Ren.	2-1-2011	855-010-0057	2-8-2011	Adopt(T)	3-1-2011
845-013-0070	12-3-2010	Amend(T)	1-1-2011	855-010-0060	2-8-2011	Adopt(T)	3-1-2011
845-015-0138	1-1-2011	Adopt	2-1-2011	855-010-0065	2-8-2011	Adopt(T)	3-1-2011
847-010-0100	2-11-2011	ReNUMBER	3-1-2011	855-010-0067	2-8-2011	Adopt(T)	3-1-2011
847-035-0001	2-11-2011	Amend	3-1-2011	855-010-0070	2-8-2011	Adopt(T)	3-1-2011
847-035-0030	2-11-2011	Amend	3-1-2011	855-010-0075	2-8-2011	Adopt(T)	3-1-2011
847-035-0030	4-8-2011	Amend	5-1-2011	855-010-0080	2-8-2011	Adopt(T)	3-1-2011
847-050-0027	2-11-2011	Amend	3-1-2011	855-010-0085	2-8-2011	Adopt(T)	3-1-2011
847-065-0005	2-11-2011	Amend	3-1-2011	855-010-0087	2-8-2011	Adopt(T)	3-1-2011
850-050-0200	4-12-2011	Adopt	5-1-2011	855-011-0005	12-23-2010	Adopt	2-1-2011
850-060-0212	12-13-2010	Amend	1-1-2011	855-011-0005(T)	12-23-2010	Repeal	2-1-2011
850-060-0225	4-12-2011	Amend	5-1-2011	855-011-0020	12-23-2010	Adopt	2-1-2011
850-060-0226	12-13-2010	Amend	1-1-2011	855-011-0020(T)	12-23-2010	Repeal	2-1-2011
850-060-0226	4-12-2011	Amend	5-1-2011	855-011-0030	12-23-2010	Adopt	2-1-2011
851-002-0010	11-29-2010	Amend	1-1-2011	855-011-0030(T)	12-23-2010	Repeal	2-1-2011
851-002-0040	11-29-2010	Amend	1-1-2011	855-011-0040	12-23-2010	Adopt	2-1-2011
851-021-0005	11-29-2010	Amend	1-1-2011	855-011-0040(T)	12-23-2010	Repeal	2-1-2011
851-021-0010	11-29-2010	Amend	1-1-2011	855-011-0050	12-23-2010	Adopt	2-1-2011
851-021-0045	11-29-2010	Amend	1-1-2011	855-011-0050(T)	12-23-2010	Repeal	2-1-2011
851-021-0055	11-29-2010	Amend	1-1-2011	855-021-0010	12-23-2010	Amend	2-1-2011
851-021-0065	11-29-2010	Amend	1-1-2011	855-041-0065	12-23-2010	Amend	2-1-2011
851-021-0090	11-29-2010	Amend	1-1-2011	855-080-0021	4-11-2011	Amend	5-1-2011
851-031-0045	11-29-2010	Amend	1-1-2011	855-080-0021(T)	4-11-2011	Repeal	5-1-2011
851-031-0070	11-29-2010	Amend	1-1-2011	856-010-0014	12-14-2010	Amend	1-1-2011
851-046-0000	12-2-2010	Repeal	1-1-2011	858-010-0007	1-25-2011	Amend	3-1-2011
851-046-0005	12-2-2010	Repeal	1-1-2011	858-010-0010	1-25-2011	Amend	3-1-2011
851-046-0010	12-2-2010	Repeal	1-1-2011	858-010-0015	1-25-2011	Amend	3-1-2011
851-046-0020	12-2-2010	Repeal	1-1-2011	858-010-0036	1-25-2011	Amend	3-1-2011
851-046-0030	12-2-2010	Repeal	1-1-2011	858-010-0039	1-25-2011	Amend	3-1-2011
851-046-0040	12-2-2010	Repeal	1-1-2011	858-040-0015	1-25-2011	Amend	3-1-2011
851-070-0000	12-2-2010	Adopt	1-1-2011	859-300-0001	2-15-2011	Adopt	3-1-2011
851-070-0000(T)	12-2-2010	Repeal	1-1-2011	859-300-0001(T)	2-15-2011	Repeal	3-1-2011
851-070-0005	12-2-2010	Adopt	1-1-2011	859-300-0010	2-15-2011	Adopt	3-1-2011
851-070-0005(T)	12-2-2010	Repeal	1-1-2011	859-300-0010(T)	2-15-2011	Repeal	3-1-2011
851-070-0010	12-2-2010	Adopt	1-1-2011	859-300-0020	2-15-2011	Adopt	3-1-2011
851-070-0010(T)	12-2-2010	Repeal	1-1-2011	859-300-0020(T)	2-15-2011	Repeal	3-1-2011
851-070-0020	12-2-2010	Adopt	1-1-2011	859-300-0030	2-15-2011	Adopt	3-1-2011
851-070-0020(T)	12-2-2010	Repeal	1-1-2011	859-300-0030(T)	2-15-2011	Repeal	3-1-2011
851-070-0030	12-2-2010	Adopt	1-1-2011	859-300-0040	2-15-2011	Adopt	3-1-2011
851-070-0030(T)	12-2-2010	Repeal	1-1-2011	859-300-0040(T)	2-15-2011	Repeal	3-1-2011
851-070-0040	12-2-2010	Adopt	1-1-2011	859-300-0050	2-15-2011	Adopt	3-1-2011
851-070-0040(T)	12-2-2010	Repeal	1-1-2011	859-300-0050(T)	2-15-2011	Repeal	3-1-2011
851-070-0050	12-2-2010	Adopt	1-1-2011	859-300-0060	2-15-2011	Adopt	3-1-2011
851-070-0050(T)	12-2-2010	Repeal	1-1-2011	859-300-0060(T)	2-15-2011	Repeal	3-1-2011
851-070-0060	12-2-2010	Adopt	1-1-2011	859-300-0070	2-15-2011	Adopt	3-1-2011
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859-300-0080(T)	2-15-2011	Repeal	3-1-2011	875-030-0020	3-2-2011	Amend	4-1-2011
859-300-0090	2-15-2011	Adopt	3-1-2011	875-030-0025	3-2-2011	Amend	4-1-2011
859-300-0090(T)	2-15-2011	Repeal	3-1-2011	877-001-0006	1-1-2011	Adopt	1-1-2011
859-300-0100	2-15-2011	Adopt	3-1-2011	877-001-0015	1-1-2011	Adopt	1-1-2011
859-300-0100(T)	2-15-2011	Repeal	3-1-2011	877-001-0020	1-1-2011	Adopt	1-1-2011
859-300-0110	2-15-2011	Adopt	3-1-2011	877-001-0025	1-1-2011	Adopt	1-1-2011
859-300-0110(T)	2-15-2011	Repeal	3-1-2011	877-005-0101	1-1-2011	Adopt	1-1-2011
859-300-0120	2-15-2011	Adopt	3-1-2011	877-010-0005	1-1-2011	Amend	1-1-2011
859-300-0120(T)	2-15-2011	Repeal	3-1-2011	877-010-0010	1-1-2011	Amend	1-1-2011
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